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COMPILATION

OF THE

REVENUE LAWS

OF THE

STATE OF NEBRASKA

FROM THE

COMPILED STATUTES OF NEBRASKA

OF



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# REVENUE LAWS OF NEBRASKA

## CONSTITUTIONAL PROVISIONS.

### ARTICLE IX.—REVENUE AND FINANCE.

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353 SECTION 1. [**Taxes.**] The Legislature shall provide such revenue as may be needful, by levying a tax by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property and franchises the value to be ascertained in such manner as the legislature shall direct, and it shall have power to tax peddlers, auctioneers, brokers, hawkers, commission merchants, showmen, jugglers, inn-keepers, liquor dealers, toll bridges, ferries, insurance, telegraph and express interests or business, venders of patents, in such manner as it shall direct by general law, uniform as to the class upon which it operates.

354 SEC. 2. [**Exemption from taxation.**] The property of the state, counties and municipal corporations, both real and personal shall be exempt from taxation, and such other property as may be used exclusively for agricultural and horticultural societies, for school, religious, cemetery, and charitable purposes, may be exempted from taxation, but such exemption shall be only by general law. In the assessment of real estate incumbered by public easement, any depreciation occasioned by such easement, may be deducted in the valuation of such property. The Legislature may provide that the increased value of lands by reason of live fences, fruit and forest trees, grown and cultivated thereon, shall not be taken into account, in the assessment thereof.

355 SEC. 3. [**Redemption.**] The right of redemption from all sales of real estate, for the non-payment of taxes or special assessments of any character whatever, shall exist in favor of owners and persons interested in such real estate, for a period of not less than two years from such sales thereof; *Provided*, that occupants shall in all cases be served with personal notice before the time of redemption expires.

356 SEC. 4. [**Taxes not to be released.**] The Legislature shall have no power to release or discharge any county, city, township, town, or district whatever, or the inhabitants thereof, or any corporation, or the property therein, from their or its proportionate share of taxes to be levied for state purposes, or due any municipal corporation, nor shall commutation for such taxes be authorized in any form whatever.

357 SEC. 5. [**County taxes—Limit.**] County authorities shall never assess taxes the aggregate of which shall exceed one and a half dollars per one hundred dollars valuation, except for the payment of indebtedness existing at the adoption of this constitution, unless authorized by a vote of the people of the county.

**358 SEC. 6. [Municipal taxes.]** The legislature may vest the corporate authorities of cities, towns and villages, with power to make local improvements by special assessment, or by special taxation of property, benefitted. For all other corporate purposes, all municipal corporations may be vested with authority to assess and collect taxes, but such taxes shall be uniform in respect to persons and property within the jurisdiction of the body imposing the same.

**359 SEC. 7. [Private property—Corporate debts.]** Private property shall not be liable to be taken or sold for the payment of the corporate debts of municipal corporations. The Legislature shall not impose taxes upon municipal corporations, or the inhabitants or property thereof, for corporate purposes.

**360 SEC. 8. [Funding indebtedness.]** The Legislature at its first session shall provide by law for the funding of all outstanding warrants, and other indebtedness of the state, at a rate of interest not exceeding eight per cent per annum.

**361 SEC. 9. [Claims upon treasury.]** The Legislature shall provide by law, that all claims upon the treasury, shall be examined and adjusted by the auditor, and approved by the secretary of state, before any warrant for the amount allowed shall be drawn. *Provided*, that a party aggrieved by the decision of the auditor and secretary of state may appeal to district court.

#### ARTICLE XII.—STATE, COUNTY AND MUNICIPAL INDEBTEDNESS.

**383 SECTION 1. [Debts.]** The state may, to meet casual deficits, or failures in revenues, contract debts never to exceed in the aggregate one hundred thousand dollars; and no greater indebtedness shall be incurred except for the purpose of repelling invasion, suppressing insurrection, or defending the state in war, and provision shall be made for the payment of the interest annually, as it shall accrue, by a tax levied for the purpose, or from other sources of revenue, which law providing for the payment of such interest by such tax, shall be irrepealable until such debt be paid.

**384 SEC. 2. [Donations.]** No city, county, town, precinct, municipality, or other subdivision of the state, shall ever make donations to any railroad, or other works of internal improvement, unless a proposition so to do, shall have been first submitted to the qualified electors thereof, at an election by authority of law, *Provided*, that such donations of a county with the donations of such subdivisions in the aggregate shall not exceed ten per cent of the assessed valuation of such county, *Provided further*, that any city or county may, by a two-thirds vote increase such indebtedness five per cent. in addition to such ten per cent; and no bonds or evidences of indebtedness so issued shall be valid, unless the same shall have endorsed thereon a certificate signed by the secretary and auditor of state, showing that the same is issued pursuant to law.

**385 SEC. 3.** The credit of the state shall never be given or loaned in aid of any individual, association, or corporation.

## CHAPTER 77.—REVENUE.

## ARTICLE I.—GENERAL PROVISIONS.

## DEFINITIONS.

**4922 SECTION 1. [Real property—Real estate—lands.]** The terms “real property”, “real estate,” and “lands,” when used in this act, except as otherwise provided, shall include city and village lots and all other lands, and all buildings, fixtures, improvements, mines, minerals, quarries, mineral springs and wells, oil and gas rights, and privileges pertaining thereto.

“An act to provide a system of public revenue and to repeal Articles I, II, III, IV and V, and Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of Article VII of Chapter seventy-seven (77), Compiled Statutes of

Nebraska for the year 1901.” Laws, 1903, H. R. 344. In effect September 1, 1903. A constitutional expression of the legislative will: Taxation of credits discussed. *State v. Fleming*, 70 Neb., 523.

**4923 SEC. 2. [Personal property.]** The term “personal property” includes every tangible and intangible thing which is the subject of ownership and not real property as defined in section one of this act.

**4924 SEC. 3. [Property.]** The word “property” includes every kind of property, tangible or intangible, subject to ownership.

**4925 SEC. 4. [Money.]** The word “money” includes all kinds of coin, all kinds of paper issued by or under authority of the United States circulating as money whether in possession or deposited in bank or elsewhere.

Money deposited in bank includes money on general deposit. *Critchfield v. Nance*,

77 Neb., 807; *White v. Lincoln*, 79 Id., 153.

**4926 SEC. 5. [Credit.]** The word “credit” includes every demand for money, labor or other valuable thing, whether due or to become due.

**4927 SEC. 6. [County Board.]** The term “County Board” includes both county commissioners and supervisors, as the case may be.

**4928 SEC. 7. [County taxes.]** The term “county taxes” includes all taxes due to the county, school districts, and other subdivisions of the county, which are levied and collected by the county.

**4929 SEC. 8. [Village—City—Town lots.]** The word “village” includes every place laid out in lots or blocks, other than cemeteries and incorporated cities. The word “cities” includes all places incorporated as such. “Town lots” includes all city and village lots, and all fractions and parts thereof.

**4930 SEC. 9. [Township—Precinct—Precinct assessor.]** The words “township” and “precinct” shall each include the other and shall also include “towns” in counties under township organization. The phrase “precinct assessor” shall include also “city assessor,” “district assessor” and “township assessor.” [Amended 1909, H. R. 215.]

**4931 SEC. 10. [Person.]** The word “person” includes any number of persons, and any co-partnership, association, joint stock company, or corporation that may be the owner of property.

**4932 SEC. 11. [Number—Gender.]** Words used in the singular

shall include the plural, and in the masculine gender, shall include the feminine and neuter genders, and vice versa as the case may require.

#### WHAT PROPERTY TAXABLE.

**4933 SEC. 12. [Property taxable — Actual value — Taxable Value.]** All property in this state not expressly exempt therefrom, shall be subject to taxation, and shall be valued at its actual value which shall be entered opposite each item and shall be assessed at twenty per cent. of such actual value. Such assessed value shall be entered in a separate column opposite each item, and shall be taken and considered as the taxable value of such property, and the value at which it shall be listed and upon which the levy shall be made. Actual value as used in this act shall mean its value in the market in the ordinary course of trade.

**4934 SEC. 13. [Property exempt.]** The following property shall be exempt from taxes: First—All property of the state, counties, and municipal corporations. Second—Such other property as may be used exclusively for agricultural and horticultural societies, for schools, religious, cemetery and charitable purposes. In the assessment of real estate, encumbered by a public easement, any depreciation occasioned by such easement shall be deducted in the valuation of such property. The increased value of lands by reason of live fences, and forest trees grown and cultivated thereon, shall not be taken into account in the assessment thereof.

Use, not ownership, governs. *Scott v. Society*, 59 Neb., 572. Abandoned property not exempt. *Holthaus v. Adams Co.*, 74 Id., 861. Commercial college a school. Property exempt must be exclusively used.

*Rohrbaugh v. Douglas*, 76 Id., 679. Fraternal beneficiary associations are not charitable associations. *Royal v. State*, 77 Id., 18. Property of Masonic lodge. *Plattsmouth v. Cass Co.*, 79 Id., 463.

#### TAX LIENS.

**4935 SEC. 14. [Realty.]** Taxes on real property shall be a first lien thereon from and including the first day of October of the year in which they are levied until the same are paid.

**4936 SEC. 15. [Personalty.]** Taxes assessed upon personal property shall be a first lien upon the personal property of the person to whom assessed from and after the first day of November of the year in which they are assessed, until paid.

**4937 SEC. 16. [By agent or representative.]** When property is assessed to any person as agent for another, or in a representative capacity, such person shall have a lien upon such property, or any property of his principal in his possession, for the taxes thereon, until he is indemnified against the payment thereof, or, if he has paid the taxes, until he is reimbursed therefor.

**4938 SEC. 17. [Priority.]** All general taxes due the state, county, school district, irrigation districts, town, road district,, city or village, shall be a first lien on the real estate on which levied and take priority over all other encumbrances and liens thereon.

Taxes for general revenue purposes superior to prior tax lien certificate. *Medland v. Van Etten*, 75 Neb., 794.

**4939 SEC. 18. [Priority—Special assessments.]** All special assessments, regularly assessed and levied by any county or municipality, duly authorized, shall be a lien on the real estate on which assessed, as provided by the Statute authorizing the same, but shall be subject to the general taxes mentioned in the last preceding section.

ASSESSORS.

**4940 SEC. 19. [Election—Term.]** At the general election in 1908, and each four years thereafter, there shall be elected a county assessor in each county of the state, whose term of office shall be four years, and shall commence on the first Thursday after the first Tuesday in January following his election. No county assessor shall be eligible to two consecutive terms. [Amended 1905, H. R. 318.]

But see chap. 26, sec. 7.

**4941 SEC. 20. [Election, precinct assessor—Assessment districts.]** At the general election in 1909 and every two years thereafter there shall be elected in each precinct, ward or township, one precinct assessor whose term of office shall be for two years, and who shall not be eligible to hold two terms in succession. He shall be ineligible for election to fill said office any two consecutive terms. Any vacancy occurring in the office of precinct assessor, from any cause, shall be filled by appointment by the county assessor and the county board in a regular or special session. At the first meeting of the county board after this act takes effect said county board shall divide all cities having a population of more than Four Thousand (4,000) into suitable assessment districts, apportioning as nearly as possible by voting wards or precincts four thousand (4,000) inhabitants to each assessor. [Amended 1909, H. R. 215.]

**4942 SEC. 21. [Assessors, oath, bond.]** The county assessor, before entering upon the duties of his office, shall take and subscribe an oath to well, faithfully, and impartially perform such duties, and shall execute a bond to the state of Nebraska, with good and sufficient sureties, to be approved by the county judge of the county, in such sum as shall equal two and one-half per cent of the total taxes collected in such county during the last preceding year; but in no case shall the amount of such bond be less than two thousand dollars nor more than ten thousand dollars. Each precinct assessor, before entering upon the duties of his office, shall take and subscribe an oath to well, faithfully, and impartially perform such duties, and execute a bond to the state of Nebraska with good and sufficient sureties, to be approved by the county judge of the county, in such sum as the county assessor shall fix, not less than five hundred dollars in any case. Said bonds shall be conditioned for the faithful performance of all duties imposed by law. The state or any municipality or person aggrieved or injured by the willful neglect of duty by the county assessor or any precinct assessor may recover upon such bond or bonds the amount lost to the state or such municipality or person on account of such neglect of the county assessor or precinct assessor, together with the costs of suit. [Amended 1909, H. R. 215.]

**4943 SEC. 22. [Compensation—Vouchers.]** County assessors shall receive as compensation for their services the following sums per annum: In counties having a population of 5,000 or less, \$250.00; in counties having a population from 5,000 to 10,000, \$450.00; in counties having a population from 10,000 to 20,000, \$600.00; in counties having a population from 20,000 to 30,000, \$700.00; in counties having a population from 30,000 to 50,000, \$800.00; in counties having a population from 50,000 to 100,000, \$1,800.00; in counties having a population of over 100,000, \$2,400.00. The compensation of the precinct assessors shall be \$3.00 per day for the time actually and necessarily employed in the discharge of their duties. Vouchers for the amount claimed by precinct assessors as such compensation shall be approved by the county assessor before the claims are allowed by the County Board. [Amended 1905, H. R. 231; 1909, H. R. 215.]

**4944 SEC. 23. [Vacancy—Appointment.]** In case the office of county assessor in any county shall become vacant, the County Board shall appoint a person to fill such vacancy, who shall qualify in the same manner as hereinbefore provided.

**4945 SEC. 24. [Precinct assessor, duties—Assessment—Return.]** Each precinct assessor shall, upon actual view, list, value, assess, and return all property subject to taxation in the townships, precincts, districts, cities or wards, and villages, in which he is elected. [Amended 1909, H. R. 215.]

**4946 SEC. 25. [School district maps.]** The county superintendent of public instruction of the several counties of the state shall, on or before the first day of April of each year, furnish to the county assessor for his use and for the use of the precinct assessors of the county, a map of the township, district or city, in which each precinct assessor has been elected, showing the number and meets and bounds of every school district or part of school district within his township, district, city, village or ward. [Amended 1909, H. R. 215.]

**4947 SEC. 26. [Postoffice—Road, school, district.]** In preparing the lists provided for in this act, each assessor shall enter in a separate column, opposite the name of each person, their postoffice address and the number of the school and road districts in which the personal property of such person is assessable. [Amended 1909, H. R. 215.]

**4948 SEC. 27. [Neglect to perform duty.]** Any county assessor or precinct assessor who shall willfully neglect or refuse in whole or in part to perform the duties required in this act, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than twenty nor more than one hundred dollars. [Amended 1909, H. R. 215.]

#### PERSONAL PROPERTY—BY WHOM LISTED.

**4949 SEC. 28. [Personalty, by whom listed.]** Personal property shall be listed in the manner following: First. Every person of full age and sound mind, being a resident of this state, shall list all his moneys, credits, bonds, or stocks, shares of stock of joint stock or other companies, when the capital stock of such company is not assessed in this state, moneys loaned or invested, annuities, franchises, royalties,

and all other personal property. Second. He shall also list all moneys and other personal property invested, loaned or otherwise controlled by him as the agent or attorney, or on account of any other person or persons, company, or corporation whatsoever, and all moneys deposited subject to his order, check or draft, and credits due from any person or persons, body corporate or politic, whether in or out of the county. Third. The property of a minor child shall be listed by his guardian; if he have no guardian, then by the father, if living; if not, by the mother, if living, and if neither father nor mother be living, by the person having such property in charge. Fourth. The property of any other person under guardianship, by his guardian; or if he has no guardian, by the person having charge of such property. Fifth. The property of a wife, by her husband, if of sound mind; if not, by herself. Sixth. The property of a person for whose benefit it is held in trust, by the trustee; of the estate of a deceased person, by the executor or administrator. Seventh. The property of corporations whose assets are in the hands of receivers, by such receivers. Eighth. The property of corporations, by the president or proper agent or officer thereof. Ninth. The property of a firm or company, by a partner or agent thereof. Tenth. The property of manufacturers and others in the hands of an agent, by and in the name of such agent, as merchandise.

"Credits" means net credits. Notes and mortgages representing moneys loaned or invested not deducted. Indebtedness may be deducted from gross credits. *Lancaster Co. v. McDonald*, 73 Neb., 453. Provision as to credits constitutional. *Scandinavian v. Kearney Co.*, 81 Id., 473. In arriving at net credits only bona fide indebtedness deducted. *Hoagland v. Merrick*, 81 Id., 83. Courts not bound by administrative construction of former law. Fraternal bene-

ficiary associations may set off certificates against mortuary fund. *Royal v. State*, 77 Id., 18. Warehousemen should list property warehoused. *Lincoln v. Co. Bd. Equalization*, 78 Id., 197. Note and mortgage taken in exchange for property not money loaned and invested, but is a credit. *Oleson v. Cuming Co.*, 81 Id., 209. Benefit certificates set off to reserve fund securities. *Scandinavian v. Kearney Co.*, 81 Id., 468.

#### PERSONAL PROPERTY—WHERE, AND HOW LISTED.

**4950 SEC. 29. [Where listed.]** Personal property, except such as is required in this chapter to be listed and assessed otherwise, shall be listed and assessed in the county, precinct, township, city, village, and school district where the owner resides, except that property having a local situs, like grain elevators, lumber yards, or any established business, shall be listed and assessed at the place of such situs. The capital stock and franchise of corporations and persons, except as otherwise provided, shall be listed and taxed in the county, precinct, township, city or village, and school district where the principal office or place of business of such corporation or person is located within this state. If there be no principal office or place of business in this state, then at the place in this state where any such corporation or person transacts business.

**4951 SEC. 30. [Farm property.]** When the owner of live stock or other personal property connected with a farm does not reside thereon, the same shall be listed and assessed in the county, township or precinct where the farm is situated. If the farm is situated in several townships or precincts, it shall be listed and assessed in the township

or precinct in which the principal place of business on such farm shall be.

**4952 SEC. 31. [Live Stock.]** Live stock, in charge of an agister, care taker, or non resident owner on the first day of April of the year for which the property is required to be listed, and not connected with the farm, shall be assessed where so kept; and any live stock which shall be brought into any county of this state for grazing purposes between the first day of April and the first day of July of any year shall be assessed by the assessor or by the County Board in such county and in the proper taxing district, unless the owner of said live stock produce a certificate from the county clerk, or other proper officer, showing that such property has been assessed elsewhere.

**4953 SEC. 32. [Property in hands of agent.]** The property of manufacturers and others in the hands of an agent shall be listed and assessed at the place where the business of such agent is carried on.

**4954 SEC. 33. [Purchaser's interest in exempted lands, personalty — U. S. lands.]** When real estate is exempt in the hands of the holder of the fee, and the same is contracted to be sold, the amount paid thereon by the purchaser, with the enhanced value of the investment and the improvement thereon, until the fee is conveyed, shall be held to be personal property and listed and assessed as such in the place where the land is situated. Any lands taken and held under the homestead or preemption laws, or any other land laws of the United States, shall be subject to full taxation as soon as the holder thereof shall become entitled to make final proof of his claim. All taxes imposed under this section may be collected by levy and sale of the interest of such owner, or by suit in the name of the county against such owner.

**4955 SEC. 34. [School lands.]** School lands sold under the provisions of any law of this state, or such as have been heretofore sold, shall not be taxable until the right to a deed shall have become absolute, but the value of the interest of such purchaser shall be taxable, which interest shall be determined by the value of the land and improvements, less the amount due the state.

See ch. 80, sec. 13, *post*.

**4956 SEC. 35. [Improvements on leased lands.]** All improvements put on leased lands shall be assessed to the owner of such improvements as personal property, and listed and assessed as such in the place where the land is situated, and the taxes imposed on such improvements shall be collected by levy and sale of the interest of such owner, the same as in all other cases of collection of taxes on personal property, or by suit in the name of the county against such owner.

**4957 SEC. 36. [Property in transitu.]** Personal property in transit shall be listed and assessed in the county, township, precinct, city, village, or school district where the owner resides, but if such property is intended for a business, it shall be listed and assessed at the place where the property of such business is required to be listed.

**4958 SEC. 37. [Property coming into state after April 1.]** When any person shall bring personal property into the state after the first day of April and prior to the first day of July in any year, it shall be the duty of the assessor to list and return such property for taxa-

tion that year, unless the owner thereof shall show to the assessor, under oath and by producing a copy of the assessment duly certified to by the proper officer of the state or county in which said property was assessed, that the same property has been listed for taxation for that year in some other county in this state, or in some other state or territory of the United States, or that said property has been received by him in exchange for money or property already listed for taxation during that year. If such property is brought into any county after the assessor has made his return for that year to the county clerk, the assessor shall at once assess such property and return the same to the county clerk, who shall enter the same on the tax books as in other cases. The persons so assessed shall have the right to appear before the county clerk at any time before the taxes become due, and the county clerk shall equalize such person's assessment.

**4959 SEC. 38. [Property seized by legal process.]** If the property of any tax payer be seized by legal process so as not to leave a sufficient amount exempt from levy and sale to pay the taxes, then the taxes on the property of such tax payer shall at once fall due, and be paid from the proceeds of the sale of the property so taken on such process in preference to all other claims against it.

**4960 SEC. 39. [Same—Notice to treasurer.]** It shall be the duty of any assessor, sheriff, constable, city councilman and village trustee to at once inform the county treasurer of the making or attempted making of any sale, levy of attachment, or removal known to him, and it shall be the duty of the county treasurer to forthwith proceed with the collection of the tax as in this act provided, when such acts become known to him in any manner.

**4961 SEC. 40. [Listing on behalf of others.]** Persons required to list property on behalf of others shall list it in the same place in which they are required to list their own; but they shall list it separately from their own, specifying in each case the name of the person, company, or corporation to whom it belongs.

Procedure warehouseman refusing to list stored property. *Lincoln v. County*, 73 Id., 197.

**4962 SEC. 41. [Owner removing—Where assessed.]** The owner of personal property removing from one county, town, city, village or district to another, between the first day of April and the first day of June, shall be assessed in the one in which he is first called upon by the assessor. The owner of personal property moving the same into this state from another state, between the first day of April and the first day of June, shall list the property brought by him, in the county, township, city, village, or precinct where he resides; Provided, if such person has been assessed, and make it appear to the assessor that he is held for taxes of the current year on the property, in another state, county, township, precinct, city, or village, he shall not be assessed again for said year.

**4963 SEC. 42. [Place of listing, how determined.]** In all questions that may arise under this chapter as to the proper place to list personal

property, or when the same can not be listed as stated in this chapter, if between several places in the same county, the place for listing and assessing shall be determined and fixed by the county board; and when between different counties, by the State Board of Equalization and Assessment; and when fixed in either case, shall be as binding as is fixed in this chapter.

Determination not disturbed unless abuse of discretion shown. *Deemer v. Grant Co.*, 76 Neb., 78.

4964 SEC. 43. [Toll bridges.] All toll bridges shall be listed in the county, township, precinct, city, village, and school district where located, and if located in two counties, townships, precincts, cities, villages, or school districts, then one-half in each.

4965 SEC. 44. [Banks—Companies—Merchants—Manufacturers—Mines.] The property of banks or bankers, or other companies, and merchants except as hereinafter specifically provided shall be listed and taxed in the county, township, precinct, city, village and school district where the business is done; and of manufacturers and mines in county, township, precinct, city, village and school districts where the manufactory or mine is located.

4966 SEC. 45. [Assessment certificate by county clerk.] It shall be the duty of the county clerk, when required by any person having property in charge which has been assessed for the current year, to give a certificate of assessment, showing the amount, kind, location and value of property assessed, and such certificate shall be evidence of the legal assessment of such property for the year. If any county clerk shall fraudulently give to any person such certificate, or if any person shall in any manner illegally obtain any such certificate, such clerk or person shall upon conviction thereof be punished by a fine in any sum not exceeding one hundred dollars, or be imprisoned in the county jail for a term not exceeding ninety days.

4967 SEC. 46. [Stage companies.] The horses, stages, and other personal property of stage companies, or persons operating stage lines, shall be listed and assessed in the county, township, city, or district where they are usually kept.

4968 SEC. 47. [Nursery stock.] Nursery stocks, growing or otherwise, in hands of nurserymen, shall be listed and assessed as merchandise.

#### SCHEDULE OF PERSONAL PROPERTY.

4969 SEC. 48. [How furnished.] The State Board of Equalization and Assessment shall, on or before the first day of January, 1904, and annually thereafter, furnish to the county clerk of each county a form of schedule for the listing and assessment of personal property; and the county clerk of each county shall, on or before the first day of April, 1904, and annually thereafter cause to be printed a sufficient number of blank schedules for use of the county, and deliver the same to the county assessor. Such schedule shall contain a full list of the various forms of personal property liable to assessment, to which the State Board of Equalization and Assessment may from time to time make such additions or amendments for the listing of other personal property as such

board may deem necessary in order that all forms of taxable property may be listed and assessed.

**4970 SEC. 49. [How made out, verified.]** Every person required by this act to list property shall make out and verify by his oath a statement of all personal property which he is required to list, either as owner, lessee, or occupant in control thereof, or as parent, guardian, trustee, executor, administrator, receiver, accounting officer, partner, or agent, upon the blanks above prescribed which shall be delivered to each taxpayer by the precinct assessor for that purpose, and when so made out shall be by each person verified before the county or deputy assessor. [Amended 1909, H. R. 215.]

**4971 SEC. 50. [Form.]** The schedule shall be in such form as the State Board of Equalization and Assessment shall from time to time provide.

**4972 SEC. 51. [Items negatived.]** In answering the list of questions in the schedule the party filling out the same shall write the word "none" after each item whenever he has no property as named under such item, and no item shall be passed without being answered.

**4973 SEC. 52. [Interrogatories—Verification.]** Such schedule shall have attached the following interrogatories which the person required to list property shall answer in writing over his signature and under oath:

**Interrogatory 1.** Are you, or were you, on the first day of April of the present year the executor of the last will, or the administrator of the estate of any deceased person, or the guardian of the estate of any infant or person of unsound mind, or the trustee of the property of any person, or the receiver of any corporation, association or firm, or the agent, attorney, or banker investing, loaning or otherwise controlling the money or the property of any person, or the president or accounting officer of any corporation, or a partner, consignee, or pawnbroker? If yes, designate for whom you were then, or now are, acting in such representative or fiduciary capacity; and if you were or now are acting under the authority of any particular court name the court, and also state to what court you report? Answer. ....

**Interrogatory 2.** Have you, since the first day of April of last year, either personally or through the agency of others, caused all or any part of your taxable property or other property to be temporarily converted either by sale, loan, exchange, or in any other manner, into bonds or other securities of the United States not taxable, or any other property not taxable, with the intention to pay back, return, exchange or dispose of such property after you have made out your tax statement? Or did you on or before the first day of April of the present year, and before you saw this interrogatory, pay back, return, exchange, or dispose of any such property for the purpose aforesaid? Answer. ....

**Interrogatory 3.** If you have converted any of your money or property, or money or property of any other person, as inquired of you, then state when the same was so converted or invested, and the time and amount or value thereof? Answer. ....

**Interrogatory 4.** Have you, at any time since the first day of April in the preceding year, withdrawn from any bank any moneys there deposited, for the purpose of converting the same into some form of non-taxable property, or for the purpose of sending the

same out of the state, or transferring the same to some other person or persons, with the intent to, or purpose of, evading the payment of tax on the same? Answer .....

State of Nebraska, }  
 ..... County. } ss.

I, ..... being duly sworn, say that the foregoing statement and schedule is true and contains a full and complete list of all property held by or belonging to me on the first day of April, including all personal property pertaining to merchandising, whether held in actual possession or having been purchased with a view to possession or profit, and all personal property appertaining to manufacturing, and all manufactured articles, whether on hand or owned by me. In all cases where I have been unable to exhibit certain classes of property to the assessor, such property has been fully and fairly described, and its true condition represented, and I have in no case sought to mislead the assessor as to the quantity or quality of the property. I further swear that, since the first day of April of last year I have not directly or indirectly converted or exchanged any of my property temporarily, for the purpose of evading the assessment thereof for taxes, into non-taxable property or securities of any kind, or transferred or transmitted the same to any person or in any wise for the purpose of evading the assessment thereof, and that my answers to the foregoing interrogatories are true. So help me God.

Signed: .....

Subscribed in my presence, and sworn to before me this ..... day of ....., 19...

....., Assessor.

[Amended 1909, H. R. 215.]

**4974 SEC. 53. [Violations of act as to listing—Penalty.]** If any person shall make a false or fraudulent list, schedule or statement, required by this act, or shall willfully fail or refuse to deliver to the assessor, when called upon for that purpose, a list of the taxable property which under this act is required to be listed, or shall temporarily convert any part of such property into property not taxable, for the fraudulent purpose of preventing such property from being listed and of evading the payment of taxes thereon, or shall transfer or transmit any property to any person with such intent, he shall be guilty of a misdemeanor and subject to a fine of not less than fifty dollars and not more than two thousand dollars. And if any person shall knowingly swear falsely regarding any matter contained in such schedule or interrogatories, he shall be deemed guilty of perjury and be punished accordingly.

**4975 SEC. 54. [Same—Duty of state board in prosecutions.]** It shall be the duty of the State Board of Equalization and Assessment, all County Boards, county assessors and precinct assessors, to notify the county attorney of the proper county, of all wilful violations of the provisions of this act known to them, or any of them; and to sign and verify complaints and informations with respect thereto when prepared by the county attorney. [Amended 1909, H. R. 215.]

**4976 SEC. 55. [Refusal to list.]** In every case where any person shall refuse to make out and deliver to the proper precinct assessor the statement required under this act, or shall refuse to make and subscribe

to any of the oaths or affirmations required, the precinct assessor shall proceed to ascertain the number of each description of the several enumerated articles of property and the value thereof; and such precinct assessor shall make a note of such refusal in a column opposite the person's name, and the county assessor shall add to such valuations, when returned by the precinct assessor, fifty per centum on the value returned. [Amended 1909, H. R. 215.]

**4977 SEC. 56. [Banks — Loan and trust — Investment companies.]**

The president, cashier or other accounting officer of every bank or banking association, loan and trust, or investment company, shall on the first day of April of each year, make out a statement under oath, showing the number of shares comprising the actual capital stock, of such association, bank, or company, the name and residence of each stockholder, the number of shares owned by each and the value of said shares on the first day of April, and shall deliver such statement to the proper deputy assessor. Such capital stock shall thereupon be listed and assessed by him, and return made in all respects the same as similar property belonging to other corporations and individuals. Whenever any such bank, association or company shall have acquired real estate or other tangible property which is assessed separately, the assessed value of such real estate or tangible property shall be deducted from the valuation of the capital stock of such association or company. The assessor shall determine and settle the true value of each share of stock after an examination of such statement, and in case of a national bank an examination of the last report called for by the comptroller of the currency; if a state bank, the last report called for by the State Banking Board; and if the assessor deem it necessary, an examination of the officers of such bank, association or company, under oath, in determining and fixing the true value of such stock, and shall take into consideration the market value of such stock, if any, and the surplus and undivided profits. Such association, bank or company shall pay the taxes assessed upon its stock and shall have a lien thereon for the same.

**A tax on shareholders, not on corporations. State v. Fleming, 70 Neb., 523.**

**4978 SEC. 57. [Merchants—Manufacturers.]** For the purpose of determining the true value of the stock of any merchant or manufacturer, the assessor shall have the right to demand of such merchant or manufacturer an inspection of his inventories and all books of account for the preceding year, including the annual invoice and inventory of stock made by such merchant or manufacturer last preceding such assessment, and the policies of insurance carried by such merchant or manufacturer on his stock for the year next preceding his assessment.

**INSURANCE AND SURETY COMPANIES.**

**4979 SEC. 58. [Foreign fire insurance companies.]** Each and every fire insurance company organized under the laws of any other state or country, and transacting business in this state, shall be taxed in the county, town, city, village and school district where the agent conducts the business, upon the gross amount of premiums received by it for insurance written upon property within the state during the preceding year. Such gross receipts to be taken as an item of property of that

value and to be assessed and taxed on the same percentage of such value as other property. The agent shall render the list and be personally liable for the tax. If he refuse to render the list, or to make affidavit that the same is correct, the amount may be valued and assessed according to the best information of the assessor.

Not a tax upon property. Authorized by second clause of sec. 1, art 9, Const. Assessments not made pursuant to city ordinance, void. *Aachen v. Omaha*, 72 Neb., 518, Tax on gross receipts not in lieu

of all other taxes. Unearned premiums returned not included in return of gross receipts. Two per cent tax valid. Discriminations discussed. *State v. Fleming*, 70 Id., 523.

**4980 SEC. 59. [Foreign life and accident companies.]** Every life insurance, and accident insurance, or life and accident insurance company organized under the laws of any other state or country, and transacting business in Nebraska, except fraternal beneficiary associations and such mutual companies as operate on the assessment plan, have no capital stock and make no dividends, and whose scheme of insurance does not contemplate the return of any percentage of earnings or profits to policy holders, shall, at the time of making the annual statement as required by law, pay into the state treasury two per cent. of the gross amount of premiums received by it during the preceding calendar year for business done in this state, including all insurance upon the lives of persons residing in the state, whether such insurance was written during such preceding year or prior thereto. At the time of paying said taxes such companies shall take duplicate receipts therefor, one of which shall be filed with the State Auditor. No certificate shall be issued by the Auditor to or on behalf of any such company authorizing it to do or continue business in this state while any such percentage or tax remains due and unpaid.

**4981 SEC. 60. [Foreign surety companies.]** Every surety company organized under the laws of any state or country other than the state of Nebraska, and transacting business in this state, shall, during the month of January of each year, make out and file with the State Auditor an itemized statement verified by the president, or vice president, and secretary, showing in detail the gross receipts from all business transacted in this state during the preceding calendar year, including the gross premium on all surety bonds or obligations of every kind, and shall at the same time pay into the state treasury as a tax on such business, two per cent. of such gross receipts. No certificate shall be issued by the Auditor to any surety company, or agent thereof, authorizing it to do or continue business in this state while any such percentage or tax remains due and unpaid.

**4982 SEC. 61. [Domestic companies.]** Every life, fire, or accident insurance company, or surety company, organized under the laws of this state, except fraternal beneficiary associations, and mut[u]al companies that operate on the assessment plan, have no capital stock, and make no dividends, and whose scheme of insurance does not contemplate the return of any percentage of earnings or profits to policy holders, shall be taxed in the county, town, city, village and school district where the agent conducts the business upon the gross amount of premiums received by it for all Nebraska business done within the state

during the preceding calendar year less amount of same ceded to order companies as reinsurance, through regularly authorized agents in this state and less premiums returned on cancelled policies. Such gross receipts less reinsurance and cancellations shall be taken as an item of property of that value and be assessed and taxed on the same percentage of such value as other property. The agent shall render the list and be personally liable for the tax. If he refuse to render the list, or make affidavit that the same is correct, the amount may be valued and assessed according to the best information of the assessor.

**4983 SEC. 62. [Peddlers.]** Peddlers plying their vocation outside of the limits of a city or town within any county in this state, shall pay for the use of said county an annual tax of twenty-five dollars; those with a vehicle drawn by one horse or selling by sample, fifty dollars; those with two or more horses, seventy-five dollars. Nothing in this section shall be held to apply to parties selling their own works or production, or books, charts, maps or other educational matter, either by themselves or employes, nor to persons selling at wholesale to merchants, nor to persons selling fresh meats, fruit, farm produce, trees, or plants exclusively.

**4984 SEC. 63. [Peddler's license.]** A license shall be issued to any such peddler by the county clerk, upon the presentation of a receipt showing the payment of the proper tax to the county treasurer, and such license shall be good only in the county where issued, and shall not authorize peddling in cities or towns.

**4985 SEC. 64. [Peddlers violating act.]** Any person violating any provision of the last two preceding sections of this act shall be deemed guilty of a misdemeanor, and the person actually peddling shall be liable whether he be the owner of the goods sold or carried by him or not, and upon conviction thereof shall be fined in a sum not exceeding fifty dollars, and costs of suit, and stand committed until fine and costs are paid, or he be discharged as provided by law. If any peddler refuse to exhibit his license to any person requiring a view of the same, he shall be presumed to have none and if he produce a license on trial shall be held to pay all costs of prosecution.

Constitutional. Inapplicable to interstate commerce. *Menke v. State*, 70 Neb., 669.

#### PAWNBROKERS.

**4986 SEC. 65. [Pawnbroker.]** Every person or company engaged in the business of receiving property in pledge, or as security for money or other thing of value advanced to the pawner or pledgor, shall be held to be a pawnbroker, and shall, at the time required by this act, return under oath the value of all property in pledge and held by him as pawnbroker on hand on the first day of April, and taxes shall be charged upon the true value of said property to the said pawnbroker the same as other property.

#### GRAIN BROKERS.

**4987 SEC. 66. (Grain broker.)** Every person, company or corporation engaged in the business of buying and selling grain for profit, shall be held to be a grain broker, and shall at the time required by this act,

determine under oath the average amount of capital invested in such business for the preceding year, and taxes shall be charged upon such average capital the same as on other property. Real estate and all other tangible property shall be assessed separately. "Tangible property" shall not apply to or include grain on hand. "Average capital" shall include all grain purchased during the year whether the same has been sold or is still on hand at the time of assessment. For the purpose of determining the average capital of such grain broker the county assessor or precinct assessor shall have the right to inspect all books of account and the check books of such grain broker and shall determine and fix the amount of such capital by such inspection. [Amended 1909, H. R. 215.]

Taxing grain in elevator. "Average capital" defined. *Central v. Lancaster Co.*, 77 Neb., 319, 327.

#### GOVERNMENT BONDS.

4988 SEC. 67. [U. S. bonds.] Any person, firm, or corporation within this state, required to list property for the purpose of taxation and who claims that a portion of his or her funds are invested in government bonds, and therefore exempt from taxation, shall be required to exhibit to the assessor, to whom they are required to make returns of such bonds, and the assessor shall enter upon such lists the species of bond or bonds so exhibited, together with the number, series, and the amount of each bond respectively. And every person claiming to be the owner of any such bond or bonds, and failing or refusing to so exhibit the same to the assessor for the purposes herein provided, shall not be entitled to any exemption on account of funds claimed to be invested in such government bonds, but shall have the aggregate amount so claimed to be invested added to his list by the assessor as so much additional moneys and credits as herein provided.

#### CORPORATIONS.

4989 SEC. 68. [Public utility corporations — Statement.] Street railways, water works, electric lights and gas works, natural gas, mining and all other like companies and like associations incorporated under the laws of, or doing business in this state, other than those specifically mentioned in this act, shall, in addition to the other property required to be listed, make out and deliver to the assessor a sworn statement of the amount of its capital stock setting forth particularly: First. The name and location of the company. Second. The amount of capital stock authorized, and the number of shares into which capital stock is divided. Third. The amount of capital stock paid up. Fourth. The market value, or, if of no market value, then the actual value of the shares of stock. Fifth. The true value of its franchise, if any, granted under and by virtue of any law of this state or ordinance of any city or village. Sixth. The total amount of indebtedness, except the indebtedness for current expenses, excluding from expenses the amount paid for the purchase or improvement of property. Seventh. The amount of capital on which a dividend was declared during the last preceding year. Eighth. The date of each dividend declared during said year, ending with the last day of the last preceding December. Ninth. The

rate per cent. of each dividend declared. Tenth. The total amount of each dividend declared during the year ending with the last day of the last preceding December. Eleventh. Gross earnings during said year. Twelfth. Net earnings during said year. Thirteenth. Amount of surplus. Fourteenth. Amount of profit added to sinking fund during said year. Fifteenth. Maximum price at which shares of stock sold during said year. Sixteenth. Minimum price at which shares of stock sold during said year. Seventeenth. Average price at which shares of stock sold during said year.

**4990 SEC. 69. [Same—Verification of schedule.]** The statement or schedule required by the preceding section shall have annexed thereto an affidavit subscribed and sworn to by two of the officers of the corporation having full knowledge of the finances and accounts of the company, stating the title of the officers making the report and name of the corporation, and that the foregoing statement signed by them is true.

**4991 SEC. 70. [Assessor dissatisfied with valuation.]** If the assessor is not satisfied with the valuation so made and returned to him, he is authorized to make a valuation of the franchise of said corporation based upon the facts contained in the report herein required, or upon any information within his possession, and he shall, in either case, assess to the corporation the value of its franchise and of its tangible property.

**4992 SEC. 71. [Foreign corporations—Statement.]** Every company incorporated by the authority of any other state or government, and doing business in this state shall, by its duly authorized agent or manager, make out and deliver to the assessor of any county, or precinct, in which the corporation owns property, a statement under oath, giving the name of the corporation, the nature of the business in which it is engaged, the name of the state or government under which it was incorporated, a description of all the real and personal property owned by said corporation in said county and the value thereof, together with the true value of its franchise in such county. Such statement shall also contain the amount of gross earnings of such corporation from its business within the state, and the expenses incurred in transacting the same. [Amended 1909, H. R. 215.]

**4993 SEC. 72. [Assessor dissatisfied.]** If the assessor is not satisfied with the valuation so made and returned to him, he shall make a valuation of the property and franchise of such corporation, based upon the report required by the preceding section, or upon any information within his possession, and he shall in either case assess to the corporation the value of its franchise in addition to the assessed valuation of its tangible property.

**4994 SEC. 73. [Foreign corporation with domestic city franchise.]** Any foreign corporation doing business under the laws of this state and owning a special or general franchise from any city of the state shall furnish a report to the assessor the same as required from companies incorporated under the laws of this state.

**4995 SEC. 74. [Interstate bridge company.]** All persons, companies or corporations, owning, controlling or operating any highway or railroad bridge independent of a railroad system, over any stream or river

forming the boundary line between this and any other state, shall be required to list the same for taxation, and the same shall be assessed and taxed at its true value in money as personal property. In arriving at one-fifth of such value, if such bridge is constructed over a navigable stream, the value of the same to the center of the channel of such stream, together with all rights, privileges and franchises connected therewith or belonging thereto, shall be taken into consideration in ascertaining the true value of such bridge property for taxation; and it shall be the duty of such persons or companies or corporations by their president, vice president, managing agent or the superintendent of such bridge, to make out a return to the proper assessor, giving the dimensions of said bridge in the county where it is located, together with a full statement of its rights, privileges and franchises, and the same shall be returned by the assessor.

4996 SEC. 75. [Same, refusing to pay tax.] If any person, company or corporation, owning, controlling or operating any highway or railroad bridge independent of any railroad system, over any stream or river which forms the boundary line between this and any other state shall neglect, fail, or refuse to pay the tax assessed against such property within thirty days after the same shall become due and payable a distress warrant shall be issued and payment of such tax enforced as in other cases.

#### EXPRESS, TELEGRAPH AND TELEPHONE COMPANIES.

4997 SEC. 76. [Defined.] Each and every person, association, co-partnership, joint stock company or corporation, engaged in the express, telegraph or telephone business in the state of Nebraska, shall be deemed and taken to be a company engaged in such respective business for the purpose of this act.

4998 SEC. 77. [Statement—Assessment.] It shall be the duty of each express, telephone and telegraph company to furnish to the local assessor on his demand made of any officer or managing agent, a true, and verified statement of its personal property, and of the gross receipts of its business in said local assessing district for the year ending April first of the current year, which verification shall be by one of the general officers of said company or by the local managing agent. Said assessor may also inspect said company's books of account for his district. For each day's neglect or refusal to so furnish said statement, the company shall forfeit the sum of twenty-five dollars and for each day's refusal to furnish its books for inspection after such demand by said assessor, the company shall forfeit the sum of twenty-five dollars, to be recovered in an action in the name of the state. In case the local assessor shall not be able to come at the amount and value of said personal property and gross receipts as herein provided by reason of such company's neglect and refusal, he shall come as near such value and amount as his information shall admit of, and to such value and amount he shall add fifty per cent, and such total shall be the assessed value of the property of such company.

4999 SEC. 78. [Where and how assessed.] Each and every express, telegraph and telephone company shall be locally assessed on its tangible property wherever it shall have any such property, in this state

in like manner as other personal property is assessed, and in addition thereto on the amount of the gross receipts for the year next preceding the first day of April of the current year, such gross receipts to be taken and considered in their total as an item of property and be so listed and levied against the same as other property. Such gross receipts shall represent the franchise valuation which shall not be otherwise assessed.

Not applicable to interstate business. *State v. Fleming*, 70 Neb., 523. Franchise defined. Taxation of franchise. That part of section which fixes the value of the franchise as the gross receipts of previous year is void. *Western Union v. Omaha*, 73 Id., 527. Assessment, how made. *Western Union v. Dodge Co.*, 80 Id., 18, 23.

5000 SEC. 79. [Lien of taxes.] The taxes assessed against any express, telegraph or telephone company shall be a first lien on all the personal property of such company from the first day of October of the year in which levied.

#### PIPE LINES.

5001 SEC. 80. [Defined.] Each and every person, association, co-partnership or corporation, owning or operating a pipe line in the state of Nebraska, whether such pipe line be used for the transmission of oil, heat, steam, or any substance to be used for lighting, heating, power or other purposes, or for the transmission of articles by pneumatic or other power, shall be deemed and taken to be a pipe line company within the meaning of this act. Nothing in this section shall be construed as including electric light companies.

5002 SEC. 81. [Statement—Assessment.] Each and every pipe line company shall furnish to the local assessor on demand made upon any officer or managing agent a true and verified statement of its personal property, and of its gross receipts in said local assessing district for the year next preceding the first day of April of the current year, which verification shall be by one of the general officers of such company, or by the local managing agent. Such assessor may also inspect the books of account of any such company in his district. For each day's neglect or refusal to so furnish such statement the offending company shall forfeit the sum of twenty-five dollars, and for each day's neglect or refusal to furnish its books for inspection after demand by the assessor such company shall forfeit the sum of twenty-five dollars. In case the local assessor shall not be able to ascertain the amount or value of such gross receipts, or personal property, by reason of such company's failure or refusal as aforesaid, he shall estimate the amount and value thereof as nearly as practicable from the best information obtainable, and to such value shall add fifty per centum thereof, and such total shall be taken as the actual value of such company's property for assessing purposes.

5003 SEC. 82. [Where and how assessed.] Each and every pipe line company shall be locally assessed wherever it shall have any tangible property in this state in like manner as other personal property is assessed, and in addition thereto on the amount of its gross receipts for the year next preceding the first day of February of the current year, such gross receipts to be taken and considered in their total as an item

of property and be so listed and levied against the same as other property. Such gross receipts shall represent the franchise valuation which shall not be otherwise assessed.

**5004 SEC. 83. [Lien of taxes.]** The taxes assessed against any pipe line company shall be a first lien on all the personal property of such company from the first day of October of the year in which levied.

#### RAILROAD AND CAR COMPANIES.

**5005 SEC. 84. [When and by whom assessed.]** The property of railroads, railroad corporations and car companies, shall be annually assessed as prescribed in this act by the State Board of Equalization and Assessment.

Method of assessment constitutional. C., Action of board in nature of final order. B. & Q. v. Richardson Co., 72 Neb., 482. Rulings, how reviewed. State v. State Board, 81 Id., 139. See art. X, *post*, for terminal taxation.

**5006 SEC. 85. [Same—By whom listed.]** The State Board of Equalization and Assessment is hereby empowered and it is made its duty, to assess all property of the railroads and railroad corporations in the state of Nebraska: Provided, however, that all machine and repair shops, general office buildings, store houses, and also all real and personal property, outside of right of way and depot grounds as of and belonging to any such railroad and telegraph companies, shall be listed for purposes of taxation by the principal officers or agents of such companies, with the assessors of any precinct of the county where such real or personal property may be situated, in the manner provided by law for the listing and valuation of real and personal property. [Amended 1909, H. R. 215.]

Right of way before and after condemnation, how listed. State v. M. P. Ry. Co., 75 Neb., 4.

**5007 SEC. 86. [When listed.]** The board on the first Monday in May, 1904, and annually thereafter shall proceed to ascertain all property of any railroad company owning, operating or controlling, any railroad or railroad service in this state which for the purpose of assessment and taxation, shall be held to include the main track, side track, spur tracks, ware house track, road bed, right of way and depot grounds, and all water and fuel stations, buildings and superstructures thereon, and all machinery, rolling stock, telegraph lines and instruments connected therewith, all material on hand and supplies provided for operating and carrying on the business of such road, in whole or in part, together with the moneys, credits, franchises and all other property of such railroad company used or held for the purpose of operating its road, and appraise and assess the same as personal property as herein provided.

**5008 SEC. 87. [Statement of property to State Board.]** On or before the fifteenth day of April, 1904, and annually thereafter, the person, company or corporation owning, operating or controlling any railroad or railroad service in this state, shall by its president, secretary, or principal accounting officer, return to the State Board of Equalization and Assessment a sworn statement or schedule of the property of said

company on the 31st day of March preceding, as follows: First. Of the right of way, track and road bed, giving the entire length of the main track in this and other states, and showing as to this state, the portion in each county, township or city. Second. The length of each side or second track and turn-out, spur and warehouse track, and aggregate length of such side or second track, turn-out, spur, and warehouse tracks, together with the name of the county, township, precinct, city, village, and school and road district, in which such side or second track and turnouts, spur and warehouse tracks are located. Third. A complete list giving size, location as to county, township and city and village, material and value of all depots, station houses, machine shops, stock yards, scales or other buildings situated wholly or in part on the right of way, together with all platforms, fuel and water stations, and the machinery and tanks connected therewith. Fourth. Showing the number of ties in track per mile, the weight of iron or steel rails per yard used in the main or side track, what joints or chairs are used in track, kind of ballasting, length of time iron or steel has been used, and what length of time the road has been built. Fifth. A full list of the rolling stock belonging to or operated by such road, which shall distinctly set forth the number, class and value of all locomotives, passenger cars, dining cars, express cars, mail cars, baggage cars, grain cars, box cars, horse cars, cattle cars, coal cars, flat cars, wrecking cars, pay cars and all other kind of cars owned or used by said company, whether within or without the state of Nebraska, together with a statement of the number of miles traveled by each of said classes of cars over the line of said company within the state of Nebraska, and without the state of Nebraska, separately during the year preceding the first day of January last past. Sixth. A statement or schedule showing: (1). The amount of capital stock authorized, and the number of shares into which said capital stock is divided. (2). The amount of capital stock paid up. (3). The market value of such stock, or if of no market value, then the true value of the shares of stock. (4). The total amount of all secured and unsecured indebtedness, except for current expenses of operating the road. (5). The location and actual valuation of all its real estate and personal property in this state that is locally assessed. Such schedule shall be made in conformity to such instructions and forms as may be prescribed by the state board of equalization and assessment, which values shall be taken into account and be considered in arriving at the true value of such railroad property and its franchises. Seventh. A correct return of the value of all tools and materials used for repairs, and of all other personal property in the state of Nebraska, together with such other information as the State Board of Equalization and Assessment may require in order to enable them to apportion such rolling stock between the main line and branches of said road. Eighth. A true statement of all bridges, showing where located as to county, township, village, city, school and road district, the true value thereof, kind and material, the length, width and height of such structure. Ninth. The total gross earnings and net earnings of said corporation, during the year for which said statement is made, and the total amount expended in the operation and maintenance of the property, and the improvements thereof, distinguishing that expended in

improvement or betterment from that expended in maintenance or operation, also the dividend last declared upon its shares of stock and the amount thereof, and the date, number, and amount of all dividends declared upon its stock during the year next preceding the date of such report, and such further information as the state board may in writing require all of which shall be taken into consideration in ascertaining and fixing the value of such road and the franchise thereof together with such other information as said state board may require in relation thereto.

**5009 SEC. 88. [Failure to make statement.]** In case of failure to make such statement or schedule to the State Board of Equalization and Assessment, such person, company or corporation so failing to make a return, shall forfeit the sum of not less than one thousand dollars, nor more than five thousand dollars, for each offense, to be recovered by action in the name of the State of Nebraska. And in such case the said state board shall proceed upon the best information obtainable, and in the manner directed in Sec. 89 hereof, to ascertain the actual and assessed valuation of all the taxable property of such corporation, and to the assessed valuation they shall add 50 per cent thereof as a penalty for such failure.

**5010 SEC. 89. [Other information—Mile value.]** The returns of railroad companies or corporations shall not be held to be conclusive as to the value of said property, but the State Board of Equalization and Assessment shall, from all the information which it is able to obtain, find the true value of all such property, including tangible property and franchises, and shall assess the same on the same basis as other property is hereby required to be assessed. The valuation of each mile to be determined by dividing the whole value by the number of miles of the main track of each road or line.

Main and branch lines valued separately. *State v. Sheldon*, 79 Neb., 455.

**5011 SEC. 90. [Statement to county clerk.]** The railroad company operating any road within the state of Nebraska, shall annually on or before the first day of April, report to the county clerk of each county through which its line of road runs, the number of miles of main track situated within each township, precinct, city, village, and school and road district in said county, together with all machines and repair shops, general office buildings, store houses and all real and personal property, not on the right of way.

**5012 SEC. 91. [Witnesses before board.]** The State Board of Equalization and Assessment shall have power to require the attendance before it of any officer, agent or servant of any railroad or railway company having any portion of its property in this state, to answer, under oath, such questions touching said property as may be propounded by the board. The board shall have power to issue whatever notice or process may be necessary to compel the attendance of any such person as a witness, which process may be served by any person deputed by the board for that purpose. Any person who shall fail to respond to such process, or who shall refuse to answer any proper question put to him by said board shall forfeit the sum of five hundred dollars to be recovered in a civil action prosecuted in the name of the state.

5013 SEC. 92. [False answers.] Any officer, agent or servant of any railroad company, or other person, who shall knowingly make any false answer to any question put to him by such board, or in its behalf touching the property, business, money and credits, or value thereof, of such company shall be guilty of perjury, and it shall be the duty of the attorney general to prosecute any one so offending.

5014 SEC. 93. [Return of state board to county clerk.] The State Board of Equalization and Assessment after having valued and assessed all the railroad property in this state in accordance with the provisions of this act, shall immediately make return to the county clerk of each and every county in which any portion of said railroad property as designated in this article, may be located, to be used as the basis of levy for the county, township, precinct, city, village, school and road districts therein, and through which any railroad or part thereof may extend.

5015 SEC. 94. [Same, contents.] Such return shall include the following: First. Number of miles of track of each railroad located in each township, precinct, city, village, and school district in the county, and the total length of such road in the county. Second. The average valuation per mile of such road. Third. The valuations that shall be placed to the credit of such township, precinct, city, village, school and road district in the county.

5016 SEC. 95. [Statement of state board to county.] The state board shall transmit to each county as soon as practicable after receiving returns from the railroad company a statement from such returns showing as to each county and railroad, all machine and repair shops, general office buildings, storehouses and also all real and personal property outside of such railroad right of way and depot grounds, not included in the property herein required to be assessed by the State Board of Equalization and Assessment, and in what township, precinct, city, village, school and road district located, which return shall be for the benefit of the county board and local assessors.

5017 SEC. 96. [Apportionment by county clerk.] Railroad property assessed by the state board, shall be apportioned by the county clerk among the respective precincts, townships, school districts, road districts, cities and villages in which the same may be entered on the tax list and collected by the county treasurer.

#### [CAR COMPANIES.]

5018 SEC. 97. [Statement to state board.] The president or other chief officer of every car company, mercantile or other company or corporation, other than a railroad company operating a line of railroad, and every firm, corporation or individual owning or operating any stock cars, furniture cars, refrigerator cars, fruit cars, poultry cars, tank cars, or any other kind of cars except sleeping cars through, in or into the state of Nebraska, shall on or before the 20th day of April in each year, make to the secretary of the State Board of Equalization and Assessment a true, full and accurate statement, verified by the affidavit of the officer or person making the report showing the aggregate number of miles made by their cars on the several lines of railroad in this state

ending with the 31st day of March last past, and a further statement showing the average number of miles traveled per day by the cars of a particular class covered by the statement in the ordinary course of business during the year, and the total number of cars owned by said company, individual or firm.

**5019 SEC. 98. [Statement of miles made by car company.]** The president or other chief officer of every railroad company whose lines run through or into this state shall, on or before the 20th day of April in each year, furnish to the Secretary of the State Board of Equalization and Assessment a statement verified by the affidavit of the officer or person making the same, showing the total number of miles made by the cars of every such car company, mercantile or other company, firm or individual on their lines, branches, sidings, spurs and ware house tracks in this state during the year ending on the 31st day of March last past.

**5020 SEC. 99. [Assessment—Refusal to make statement.]** It shall be the duty of the State Board of Equalization and Assessment to ascertain from said statements the number of cars required to make the total mileage of the cars of each such car company, mercantile or other company or corporation within the period of one year and such number of cars so found shall be the number of cars on which said company, firm or individual shall be assessed for said year. The State Board of Equalization and Assessment shall ascertain and fix the valuation upon each particular class of cars, which as nearly as possible, shall be the true value of such cars, and the number so ascertained shall be assessed to the respective car company, mercantile or other company, firm or individual. For the purpose of making the assessment, the board is authorized to base the assessment upon the returns of the several railroad companies. In case any such car company, mercantile or other company, firm or individual shall fail or refuse to make the statement herein required, the State Board of Equalization and Assessment shall fix the value of such cars, adding fifty per cent. thereof, as hereinafter provided; and in determining the number of such cars, the State Board of Equalization and Assessment, insofar as may be practicable, shall harmonize the statements of the several railroad companies, car companies, mercantile or other companies, firms or individuals with respect thereto. Such assessment shall be included in the records and proceedings of the board, and shall be prorated among the several counties traversed by railways carrying said cars in proportion to the entire main track, mileage or railways carrying said cars in said county, and a statement transmitted to the county clerk of each county as provided in cases of other assessments made by said board and shall be apportioned by the county clerk as provided in section 96.

**5021 SEC. 100. [Refusal to make statement—Application of act.]** In case any such car company, mercantile or other company, firm or individual shall fail or refuse to make the statement herein required within the time above specified, or shall make a false statement, the said Board shall proceed to assess the property of such car company, mercantile company, firm or individual so failing, and shall add fifty per cent. to the value thereof, as ascertained and determined by said board. Sec-

tions 97, 98, and 99 shall not apply to railroad companies operating railroads within this state, nor to sleeping car companies whose cars are used regularly by railroads running into and through this state.

#### SLEEPING-CAR COMPANIES.

**5022 SEC. 101. [Defined.]** Every person, persons, firm, co-partnership, joint stock association or corporation owning any sleeping cars, parlor cars, buffet cars or tourist cars used by railroads upon regular lines running into or through the state and upon which an extra charge in addition to the railroad transportation fare is made, shall, for the purpose of this act, be held and deemed to be, and shall hereafter be called a sleeping car company.

**5023 SEC. 102. [Report to state board.]** Every sleeping car company whose cars are used by railroads running into or through this state shall, on or before the 20th day of April, 1904, and annually thereafter, make to the secretary of the State Board of Equalization and Assessment a report for the year ending March thirty-first preceding, sworn to by some officer of such sleeping car company acquainted with the facts showing: First. The total number of cars of each class used in transacting the business upon all of the lines running into or through this state. Second. The fair average value per car of each of the classes of such cars. Third. The total number of miles of railroad main track over which such cars were used within this state, and within each county in this state. Fourth. The total value of such cars due to this state as the number of miles of railroad main track over which such cars were used within this state bears to the total number of miles of railroad main track over which such cars are used, and the value per mile.

**5024 SEC. 103. [Assessment.]** The State Board of Equalization and Assessment shall ascertain and fix the number of each particular class of cars used in transacting the business upon all lines running into and through this state, and, as nearly as possible, the true value of all of the different classes of cars used upon lines running into and through this state; and the State Board shall assess that proportion of such total value which the number of miles of railroad main track over which such cars were used within this state bears to the total number of miles of railroad main track over which such cars were used everywhere. Such assessment shall be included in the records and proceedings of the board, and shall be prorated among the several counties traversed by railway having said cars, and shall be apportioned by the county clerk as provided in section 96.

**5025 SEC. 104. [Refusal to report.]** If any such sleeping car company shall fail or refuse to make the report as herein required, the State Board of Equalization and Assessment shall proceed to assess the property of such sleeping car company upon the best information it may be able to obtain, and shall add to the value so ascertained fifty per cent. as a penalty for the failure or refusal of such sleeping car company to make its report.

#### ASSESSMENT OF REAL ESTATE.

**5026 SEC. 105. [When made.]** All real property in this state subject to taxation shall be assessed on the first day of April, 1904, and every

fourth year thereafter which assessment shall be used as basis of valuation for taxation until the next quadrenial assessment except as hereinafter provided.

5027 SEC. 106. [Assessment books, how made.] On or before the first day of April of each year in which an assessment of real estate is to be made the county clerk shall make up for the several townships, precincts, cities and villages in the county in books to be provided for that purpose by the State Board of Equalization and Assessment, a list of the taxable lands and lots in his county. When a whole section, half section, quarter section, or half quarter section belongs to one owner, it shall be listed as one tract, and when all lots in the same block belonging to one owner, they shall be listed as a block. When several adjoining lots in the same block belong to the same owner, they shall be included in one description. When any tract or parcel of real estate is situated in more than one township, precinct, school, road, or other district, the portion thereof in each shall be listed separately. Said clerk shall enter in the proper column, opposite each respective tract or lot, the name of the owner thereof, so far as he shall be able to ascertain the same. Such books shall contain columns in which may be shown the number of acres or lots not improved, and the value thereof; the number of acres or lots improved, and the value thereof; the improvements and the value thereof; the total value, the assessed value, and such other columns as may be required. Provided, That in counties of over 30,000 inhabitants the county assessor shall make up the assessment books. [Amended 1905, H. R. 51.]

5028 SEC. 107. [Separate books for municipalities.] Separate books shall be made for the assessment of property and collection of all taxes and special assessments thereon, within the corporate limits of cities, towns, and villages, if ordered by the County Board, except where such cities, towns or villages are included within the limits of any township in counties under township organization.

5029 SEC. 108. [Books, etc., when delivered to assessor—Fees.] The county clerk shall cause such assessment books, and all blanks necessary to be used by the assessor in the assessment of real and personal property, to be delivered to the assessor on or before the first day of April in each year. For preparing assessment books, the County Board shall pay such sum as shall seem to them just and equitable.

5030 SEC. 109. [Additional lands and improvements.] Each assessor shall annually, at the time of taking the list and valuation of personal property, also take a list of all real property that shall have become subject to taxation since the last previous listing of the property in the County, with the value thereof, and of all buildings and all other improvements of any kind, if over one hundred dollars in value, which shall not have been previously included in the value of the land and lots on which such improvements have been made, and shall make return thereof to the county assessor at the same time he is required to make his returns of personal property. In said return he shall give a description of the tract of land or lot upon which said improvement has been made, the kind of improvements so made, and the true value added to such parcel of land or lots by the said improvements. The additional

sum it is believed the land or lot on which such improvement has been made would sell for at private sale by reason of such improvement, shall be considered the value of such improvement, and taxed thereafter at such value until the next assessment. In case of destruction by fire, flood or otherwise of any building or other improvement which shall have been made previous to the last valuation of the land or lot on which the same shall have been, or the value of which shall have been added to any former valuation, of such land or lot, the assessor shall determine as nearly as possible for how much less such land or lot would sell, in consequence of such destruction, and make return thereof to the county clerk as in this section provided, and thereafter said land or lot shall be taxed on the decreased value until the next assessment of said land or lot or until other improvements are placed thereon.

**5031 SEC. 110. [Copy, property statement by assessor.]** The assessor, when requested, shall deliver to the person assessed a copy of the statement of property hereinbefore required, showing the valuations of the assessor of the property so listed; which copy shall be signed by the assessor.

**5032 SEC. 111. [Precinct assessor—Return.]** The precinct assessor shall on or before the last Monday in May of the year for which the assessment is made, return his assessment book to the county assessor, verified by his affidavit, substantially in the following form:  
State of Nebraska,.....County. SS.

I, ....., precinct assessor of ....., do solemnly swear that the book to which this is attached contains a correct and full list of all real and personal property subject to taxation in ....., so far as I have been able to ascertain the same; that the value of all property, moneys, and credits of which a statement has been made and verified by the oath of the persons required to list the same, is hereby truly returned, as set forth in such statement; that in every case where I have been required to ascertain the amount or value of the property of any person, or body corporate, I have diligently, and by the best means in my power, endeavored to ascertain the true amount and value, and that, as I verily believe, the full value thereof is set forth in the above return, and that in no case have I knowingly omitted to demand of any person of which I was required to make it, a statement of the amount and value of his property which he was required by law to list, nor have I connived at any violation or evasion of any of the requirements of the law in relation to the assessment of property for taxation, so help me God.

.....  
Subscribed in my presence and sworn to before me this.....  
day of ....., 19.....

[Amended 1909, H. R. 215.]

**5033 SEC. 112. [Same—Accounts—When paid.]** Precinct assessors shall make out their account in detail, giving the date of each day which they shall have been employed, which account they shall verify under oath. The precinct assessor shall not be entitled to compensation until he shall have filed the lists, schedules, statements, and books appertaining to the assessment of property for such year, with the county

assessor—the books to be accurately made and added up, and showing the property assessed, listed at its full value. Any County Board allowing bills of precinct assessors in cases where the provisions of this section have not been complied with shall be liable on their bonds for amount of same. [Amended 1909, H. R. 215.]

#### DUTIES OF OFFICERS.

5034 SEC. 113. [Assessor—General duties.] The county assessor, in addition to the other duties provided by law, shall have general supervision over and direction of the assessment of all property in his county. He shall advise and instruct precinct assessors as to their duties, and shall visit them for that purpose as often as possible, and at least once between the first day of April and the first day of June of each year. He shall require of precinct assessors that the assessment of property be uniform throughout the county, and that the property be assessed as directed by law; and to that end he shall be authorized to alter or change any assessments made by any precinct assessor, so that the same shall conform to law. He shall furnish each precinct assessor all necessary blanks, schedules, maps and lists for the purpose of making such assessment, and shall receive from each precinct assessor the assessment rolls, lists of property with oaths attached and schedules as fast as the same are completed. He shall carefully examine the assessment rolls, lists, schedules and returns made by precinct assessors, and shall see that the same are correctly made and are complete in all respects. He shall require any necessary or proper changes to be made by the precinct assessor before transmitting the same to the county clerk. As soon as the assessment rolls, lists and returns have been corrected and verified by the county assessor he shall file the same with the county clerk. The county assessor shall obey all rules and regulations made under this act and the instructions sent out by the State Board of Equalization and Assessment. It shall be the duty of the county assessor to examine the records in the office of the register of deeds and county clerk for the purpose of ascertaining whether mortgages on real estate and personal property, mineral leases, title notes, contracts and bills of sale intended to operate as a lien in said county, have been fully and correctly listed, and shall add to the assessment roll all omitted mortgages, mineral leases, title notes, contracts and bills of sale intended to operate as a lien and belonging to residents of his county, and not otherwise assessed, upon notice to the owner thereof or his agent. He shall examine the records in the office of the county judge and ascertain whether the property belonging to minors, insane and idiotic persons, and the estates of deceased persons, have been fully and correctly listed, and shall add to or change any such assessment so that the same shall be fully assessed. He shall examine the records in the office of the clerk of the district court to ascertain whether any judgments or liens thereon filed, belonging to residents of his county, and not otherwise assessed, have been omitted from the assessment rolls, and in case of any such omission, he shall add the same to the assessment roll after notice to the owner. [Amended 1905, H. R. 51; 1909, H. R. 215.]

**5035 SEC. 114. [County officers.]** It shall be the duty of the register of deeds, county clerk, county judge, clerk of the district court and all other county officers, to assist the county assessor, in the examination of the records of their respective offices for the purpose heretofore provided, and they shall give to the county assessor any information in their possession that will assist him in the assessment of such property. Any county officer who shall fail, neglect or refuse to perform any of the duties imposed upon him by this section, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined in the sum of not less than fifty dollars nor more than five hundred dollars for each offense.

**5036 SEC. 115. [Assessor—Negligence in office—Vacancy.]** The county assessor shall, in the listing and assessing of property, follow the rules and regulations provided by law and the instructions formulated by the State Board of Equalization and Assessment. Whenever it shall appear to the satisfaction of the State Board of Equalization and Assessment that any county assessor has wilfully neglected or refused to obey any of the provisions of law, or the rules, regulations or instructions of the said board, or has wilfully neglected and refused to perform any of the duties imposed upon him by law, or by the rules, regulations or instructions of said board, said board shall forthwith remove such county assessor from his office, and the office of county assessor of such county shall thereupon become vacant.

**5037 SEC. 116. [Completion of assessments, when.]** The precinct assessors shall complete their assessment rolls, schedules, lists and returns, and deliver the same to the county assessor for revision, not later than the last Monday of May in each year. The county assessor shall complete his revision of the same and shall file them with the county clerk on or before the first day of June of each year. [Amended 1909, H. R. 215.]

**5038 SEC. 117. [County clerk—Correction of errors.]** The county clerk shall correct any errors in description or quantity of land contained in the list of real property in his county on the tax list, and he is hereby authorized and it shall be his duty to assess the real property of any person liable to pay taxes, which the assessor has failed to assess, and to place the same on the tax roll, and the taxes on the same shall be collected as in other cases; and the county clerk for the purpose of assessing such property, is authorized to administer oaths to the owner of such property, or any other person touching the value of the same; but the county clerk is not required to inspect such property.

**5039 SEC. 118. [Omitted lands—Assessment.]** It shall be the duty of county clerks to cause all lands in their respective counties that, for any reason, have not been assessed, or have escaped taxation for any former year or years, when the same were liable to taxation, to be placed upon the tax lists and carry out an assessment against said lands equal to, and in accordance with the assessment that would have been charged against said lands had they been properly listed and assessed at the time they should have been assessed under the provision of the general laws governing the assessing and taxation of lands; but no land shall be assessed under the provision of this section where the

same shall have changed ownership otherwise than by will, inheritance or gift.

5040 SEC. 119. [**Same—No penalty—Collection.**] All taxes charged under the provisions of the preceding section shall be exempt from any back penalty or interest, and shall be collected in the same manner as other taxes levied upon real estate.

COUNTY BOARD OF EQUALIZATION.

5041 SEC. 120. [**Board—Clerk.**] The County Board, the county assessor and county clerk, shall constitute the County Board of Equalization, and the county clerk shall be the clerk of said board.

5042 SEC. 121. [**Sessions—Duties.**] The County Board shall hold a session of not less than three and not more than twenty days for the purpose contemplated in this section, commencing on the first Tuesday after the second Monday of June each year, and shall: First. Fairly and impartially equalize the valuation of the personal property of the county, and to that end shall, on the application of any person who may deem himself aggrieved, or who shall complain that another is assessed too low, review the assessment and correct the same as shall appear to be just. Second. At its meeting in 1911, and every second year thereafter, equalize the valuation of real property of [the county] by raising the valuation of such tracts and lots as are assessed too low, and by lowering the valuation of such tracts and lots as are assessed too high; But in cases of evident error of assessment or of apparent gross injustice in overvaluation or undervaluation of real property the County Board of Equalization may at any of its annual meetings consider and correct the same by raising after due notice has been given to the interested party or parties or by lowering the assessed valuation of such real property; And in cases where farm lands or real property consisting of city, town or village blocks or lots have been assessed as entities, and, after time of such assessment part or parts of such entities have been transferred by the owner or owners thereof to another party or to other parties by sale or otherwise, then the County Board may at such annual meeting as board of equalization apportion the just and equitable proportion of the assessed valuation of such entities to the various parcels of land into which such entities have by transfer of title been divided, upon notice given to parties to such transfer. Third. Ascertain whether the valuation in one township, precinct or district, bears just relation to all townships, precincts, or districts in the county; And may increase or diminish the aggregate valuation of property in any township, precinct or district, by adding or deducting such sum upon the hundred as may be necessary to produce a just relation between all the valuations of the property in the county. It may consider lands, village or city lots and personal property, and different classes of personal property, except property assessed or valued by the State Board of Equalization and Assessment, separately and determine a separate rate per cent, of addition or reduction for each of said classes of property as may be necessary to adjust the equalization thereof. Fourth. Adjust assessments for the county by raising or lowering the assessment of any person as to any or all the items of his assessment in such manner

as to secure the listing of property at its actual value and the assessment of property at its taxable value. But in no case shall the assessment of any person be raised by the board until such person, or his agent, shall be previously notified, if such person or his agent be found in the county. Fifth. Also add to the assessment rolls any taxable property not included therein, assessing the same in the name of the owner thereof as the assessors should have done, but no personal property shall be so added unless the owner thereof is previously notified, if he be found in the county. [Amended 1905, S. F. 69; 1909, S. F. 28.]

Appeal from determination lies to district court, not to state board. State v. Drexel, 75 Neb., 751. Second par. applies to acts of assessor or board. State v. Grow, 74 Id., 850.

**5043 SEC. 122. [Examinations.]** Whenever any County Board of Equalization shall have reason to believe that any person, company, or corporation has not listed all of his or its property for taxation, or that any property has not been fairly valued and assessed, it shall be lawful for such board to call before it, any such person, or any agent or officer of any such corporation, and require the production of any books, records, or papers. The person so called shall be sworn, and shall answer under oath, and give all information which he may possess, touching the existence, location, and value of any property sought to be listed, valued, and assessed, and no person so called shall be excused from answering any question put to him on the ground that his answer might tend to criminate him, but no answer he shall make, or testimony he may give, shall be used against him in any criminal prosecution.

**5044 SEC. 123. [Process—Witnesses—Fees.]** The Board may issue process to compel the attendance before it of any person, with books, records and papers if necessary, which process shall be served by the sheriff the same as a summons from the district court, and he shall receive the same fees therefor. Any person who shall fail to respond to such process, or who shall refuse to answer any proper question put to him by said board, shall forfeit the sum of five hundred dollars, to be recovered in a civil action in the name of the county. Witnesses shall receive the same fees as witnesses in the district court to be paid by the person the valuation of whose property is being investigated in case the board finds that such person has wilfully concealed or undervalued his property; otherwise, by the county.

**5045 SEC. 124. [Appeals.]** Appeals may be taken from any action of the County Board of Equalization, to the district court within twenty days after its adjournment, in the same manner as appeals are now taken from the action of the County Board in the allowance or disallowance of claims against the county. No appeal shall in any manner suspend the collection of any tax, or the duties of officers relating thereto, during the pendency of the same, and all taxes affected thereby which may be collected shall be kept by the treasurer in a special fund without distribution.

The court shall hear the appeal as in equity and without a jury, and determine anew all questions raised before the board which relate to the liability of the property to assessment, or the amount thereof, and

any decision rendered therein, shall be certified by the clerk of the court to the county clerk, who shall correct the assessment books in his office accordingly. If the tax books have been delivered to the treasurer of the county for the collection of such tax before the determination of such appeal in the district court, a copy of such decision shall be certified to the treasurer of such county who shall thereupon distribute or return such tax so held, in accordance with such decision, and such treasurer shall correct his record to conform to such decision, unless a further appeal be taken to the Supreme Court, in which case the treasurer shall hold said tax until the final determination of such appeal in that court.

Provision of trial without jury upheld. *State v. Fleming*, 70 Neb., 523. See as to appeal, sec. 136. No formal finding as a basis for equalization between precincts necessary. *Lancaster v. Whedon*, 76 Id., 753. Adequate remedy at law. *Western v. Douglas*, 76 Id., 666. Presumption in favor of correctness of board and of as-

essor. *Woods v. Lincoln*, 74 Id., 526. On appeal on ground of excessive valuation, sole question is actual market value; how question tried. *Lancaster v. Brown*, 76 Id., 286. Inquiry in district court limited to questions raised before board. *First Nat. Bk. v. Webster Co.*, 77 Id., 813; *Nebraska v. Hall Co.*, 75 Id., 405.

**5046 SEC. 125. [County abstract of assessment.]** The county assessor, immediately after the Board of Equalization shall have completed its labors, shall prepare an abstract of the assessment rolls of his county on blanks to be furnished by the state board, the values to be given shall be as equalized and corrected by the County Board, and forward it to the State Board of Equalization and Assessment on or before the tenth day of July; such abstract shall contain: The total number of acres of taxable land in the county under cultivation. The total number of acres of taxable land not under cultivation. The total number of acres of taxable lands in the county. The aggregate actual value of all taxable lands. The aggregate assessed value of all taxable lands. The average actual value per acre of all taxable lands. The average assessed value per acre of all taxable lands. The number of improved town lots. The number of unimproved town lots. The average actual value of each town lot. The aggregate actual and assessed value of all town lots. The aggregate value of all personal property. The total value of all taxable property.

|                                                                                         | Number | Assessed Value |
|-----------------------------------------------------------------------------------------|--------|----------------|
| Number of horses .....                                                                  | .....  | .....          |
| Number of cattle .....                                                                  | .....  | .....          |
| Number of mules and asses .....                                                         | .....  | .....          |
| Number of sheep .....                                                                   | .....  | .....          |
| Number of hogs .....                                                                    | .....  | .....          |
| Number of goats .....                                                                   | .....  | .....          |
| Number of farm implements .....                                                         | .....  | .....          |
| Number of wagons .....                                                                  | .....  | .....          |
| Number of pleasure carriages of every description .....                                 | .....  | .....          |
| Number of gold watches .....                                                            | .....  | .....          |
| Number of silver watches .....                                                          | .....  | .....          |
| Plate and jewelry .....                                                                 | .....  | .....          |
| Number of piano fortes .....                                                            | .....  | .....          |
| Other musical instruments .....                                                         | .....  | .....          |
| Interest on bonds of the United States, Amount .....                                    | .....  | .....          |
| Bonds and interest on bonds of any state, county, district or municipality, value ..... | .....  | .....          |
| Other bonds not exempt from taxation, value .....                                       | .....  | .....          |
| Stock in any company or corporation, value .....                                        | .....  | .....          |
| Shares in national bank, Amount .....                                                   | .....  | .....          |
| Stocks in any company or corporation, value .....                                       | .....  | .....          |
| Moneys, Amount .....                                                                    | .....  | .....          |
| Credits, value .....                                                                    | .....  | .....          |
| Value of merchant's stock .....                                                         | .....  | .....          |
| Value of merchant's moneys and credits .....                                            | .....  | .....          |
| Value of manufacturer's stock .....                                                     | .....  | .....          |
| Moneys and credits of manufacturers .....                                               | .....  | .....          |
| Shares of interest in any vessel or boat .....                                          | .....  | .....          |
| Tax sales certificates .....                                                            | .....  | .....          |
| Judgments .....                                                                         | .....  | .....          |
| Notes secured .....                                                                     | .....  | .....          |
| Notes unsecured .....                                                                   | .....  | .....          |
| Mortgages securing obligations, other than notes .....                                  | .....  | .....          |
| Aggregate value of all other personal property .....                                    | .....  | .....          |

**5047 SEC. 126. [Same — Assessor — Refusal to make.]** If any county assessor shall refuse or neglect to prepare an abstract of the assessment roll of his county, and forward the same to the State Board of Equalization and Assessment as required in the preceding section, he shall forfeit to the state the sum of one hundred dollars to be recovered in a civil action in the name of the State; and the certificate of the State Board of Equalization and Assessment, authenticated by its seal, setting forth the failure of the county assessor to comply with the provisions of said section, shall be prima facie evidence of such refusal or neglect, on the trial of such action.

#### STATE BOARD OF EQUALIZATION AND ASSESSMENT.

**5048 SEC. 127. [Members — Meeting — Secretary.]** The Governor, Auditor, Treasurer, Secretary of State, and Commissioner of Public Lands and Buildings, are hereby constituted the State Board of Equalization and Assessment. Such board shall meet and organize on the 15th day of December, 1903, and shall then appoint a secretary who shall hold his office at the pleasure of the board, and perform such duties as may devolve on him by law or the rules and regulations of said board. The secretary shall have authority to administer oaths and affirmations,

and to call special meetings of the board at such times as its business may require. He shall receive as full compensation for his services the sum of sixteen hundred dollars per annum payable quarterly.

**5049 SEC. 128. [President — Temporary officers — Quorum.]** The Governor shall be ex-officio president of said board and preside at all meetings when present. In the absence of either the president or secretary their places may be filled temporarily by other members of the board. Three members shall constitute a quorum for the transaction of business.

**5050 SEC. 129. [Seal — Bookkeeping — Forms — General duties.]** Said state board shall have a seal with which all orders, certificates and process shall be attested. The board shall provide a uniform method of keeping all books relating to taxation in the several counties of the state. It shall formulate and send to the county clerk of each county all necessary forms to be used in the listing, assessment and return of property, and in the levy and collection of taxes. It shall have general direction and control of the county assessors in the performance of their duties, and shall direct the same.

Board cannot direct assessor in valuation of property or in determining a particular item of property assessable. *State v. Drexel*, 75 Neb., 751.

**5051 SEC. 130. [Equalization.]** The State Board of Equalization and Assessment shall, on the third Monday of July each year, meet at the State Capital for the purpose of equalizing assessments. They shall proceed to examine the abstracts of property assessed for taxation in the several counties of the state, including railroads entirely within such county, and all other property, and shall equalize such assessments so as to make the same conform to law, and for that purpose they shall have the power to increase or decrease the assessed valuation of any county, and such increase or decrease shall be made by a per centum, and the per cent. of increase or decrease when made shall be certified to the county clerk of the proper county, who shall thereupon add to or deduct from the assessment of each piece or parcel of property in the county affected, an amount equal to the per cent. of increase or decrease fixed by the state board. The state board shall have the power, in equalizing assessments, to increase or decrease the assessed valuation of any class, classes or kinds of property, whenever in their judgment it shall be necessary to make such assessments conform to law; and such increase or decrease, when made, shall be certified to the county clerk, and by the county clerk extended upon the tax rolls as hereinbefore provided. But in the extension of valuations, the county clerk shall reject all such amounts as may fall below two dollars and fifty cents, and all amounts of two dollars and fifty cents or more shall be extended as the next higher five dollars or multiple thereof, thus making all valuations end in cipher or five. In making the equalization provided for in this section, the state Board of Equalization and Assessment shall not increase the aggregate valuation of all the counties in the state to an amount greater than that returned by the various county assessors to the State Board of Equalization and Assessment, except as hereinafter provided for in this section. In the event that it shall appear to the

State Board of Equalization and Assessment that a just, equitable and legal assessment of the property in the state cannot be made without increasing the aggregate valuation as returned by the various county assessors to the State Board of Equalization and Assessment, the said State Board of Equalization and Assessment shall issue a notice to the counties that are undervalued and shall require said counties to appear and show cause why the assessment of such county should not be increased, and after a full hearing, the State Board of Equalization and Assessment may increase the valuation of said county such a per centum as shall be necessary to make a just, legal and equitable assessment of the property in the state. The notice provided for in this section shall be served on the county clerk, the county assessor and the chairman of the county board, at least five days before the date set for the hearing mentioned herein. [Amended 1905, S. F. 3; 1909, S. F. 28.]

Duties of board discussed. Acts in quasi-judicial capacity. No notice required. Deals not with individual assessments. Equalizes, not reassesses. Relative values of property, how ascertained. *Hacker v. Howe*, 72 Neb., 385. See, also, art. X, *post*.

**5052 SEC. 131. [Adjournment—Belated abstracts.]** The said state board shall have power to adjourn from time to time until said equalization shall be completed, and shall have power to send for the abstract of the assessment rolls of any county, where the county assessor has failed to transmit the same as herein provided; and the expenses thereof, if any, shall be charged to the proper county and collected at the time of the next settlement with said county. Any county so charged shall deduct the amount thereof from the salary of such delinquent county assessor.

**5053 SEC. 132. [Assessment, when final—Taxes levied upon.]** No assessment shall be deemed final until the action of the state board shall have been had and certified to county clerks, and by them extended upon the tax rolls, as herein provided; and the assessment as herein made and corrected by the County Board of Equalization and by the State Board shall be the final assessment of property for that year, except as herein provided, and taxes for all purposes shall be levied upon such final assessment. Provided, however, that the county assessor or county clerk may, at any time, add to the tax rolls any property omitted therefrom for the current year.

**5054 SEC. 133. [Costs on appeal.]** Whenever any person shall appeal to the district court from the assessment of his property as fixed by the County Board of Equalization, and said appeal shall be sustained in whole or in part, the costs of such appeal, including costs of witnesses, if any, shall be paid by the county wherein such property is situated. In case said appeal is not sustained in whole or in part the costs shall be paid by the appellant. Whenever any person shall appeal from the assessment of another as fixed by the County Board of Equalization, and said appeal shall be sustained in whole or in part, the costs of such appeal shall be taxed to the appellee; and where said appeal is not sustained the costs shall be taxed to the appellant, unless the appellant shall be the county assessor or county clerk, in which case the costs shall be paid by the county.

**5055 SEC. 134. [State taxes—Rate, amount, levy.]** The state board shall determine the amount of all taxes required for state purposes, and the rate of taxation upon all property in the state necessary to raise the same, and make the levy of such taxes throughout the state. The rate of the general state tax shall be sufficient to realize the amount necessary to meet appropriations made by the Legislature for the year in which the tax is levied, and an additional sum not exceeding twenty per cent. of the amount of any existing state indebtedness, and not exceeding in all five mills on the dollar valuation. The rate of the state school tax shall be not less than one-half mill nor more than one and one-half mills on the dollar valuation.

**5055a SEC. 134a. [Same—Redemption state warrants.]** The state board of equalization shall levy each year upon all the assessed property of the state a redemption fund of one (1) mill per dollar valuation, for the purpose of paying registered state warrants outstanding against the general fund of the state. Provided, that whenever said warrants become reduced to an amount less than the amount of taxes, said one (1) mill will raise, then the state board shall levy such proportion of one (1) mill as may be necessary to cancel the balance of said warrants. [1905, S. F. 7.]

**SECS. 134a-d.** "An act to provide for the payment of registered warrants outstanding against the general fund of the State." Laws, 1905, S. F. 7. In effect July 1, 1905.

**5055b SEC. 134b. [Payment of interest on warrants.]** Taxes raised under the provisions of this act may be used to pay interest upon said warrants. [Id., § 2.]

**5055c SEC. 134c. [Warrants, how paid—Notice.]** As soon as the state treasurer has received enough money to pay a warrant he shall immediately notify the person in whose name the same is registered that said warrant will be paid upon presentation, and interest thereupon then shall cease; provided, that said warrants shall be paid in the order of their registration. [Id., § 3.]

**5055d SEC. 134d. [Same.]** Nothing in this act shall prevent the state treasurer from paying any of said warrants out of any moneys on hand at any time in the general fund. [Id., § 4.]

**5056 SEC. 135. [Rate—Statement to county clerk.]** On or before the first Monday of August in each year the state board shall transmit to the county clerk of each county a statement of the rate of taxation required for the general state tax, the state school tax, and any other general or special taxes, as directed to be levied and collected by the State Board.

**5057 SEC. 136. [County taxes, rate, levy, appeal.]** The County Board of Equalization shall adjourn from time to time until the action of the State Board of Equalization and Assessment shall have been had and certified to the county clerk and on the last day of sitting as a board of equalization the County Board shall levy the necessary taxes for the current year, including all county, township, city, school district, precinct, village, road district, and other taxes required by law to be certified to the county clerk and levied by the County Board; provided, that any such taxes regularly voted, and certified to the county clerk after the County Board shall have made such levy and before the county clerk

shall have completed the tax list, shall be levied by the county clerk, if within the limit of the law, and extended upon the tax list the same as if levied by the County Board. The rate of tax for county purposes shall not exceed one dollar and fifty cents on the hundred dollars valuation, unless authorized by a vote of the people of the county, and shall be as follows: For ordinary county revenue, including the support of the poor, not more than nine mills on the dollar valuation; for roads, not more than five mills on the dollar valuation; for county bridge fund, not more than four mills on the dollar valuation; for county sinking fund, not more than four mills on the dollar valuation, and labor tax as provided in the following section. Any tax payer in counties of a population of more than 30,000 and less than 100,000 may appeal from the action of the county board in making said levy, if in the judgment of such tax payer said levy is for an unlawful or unnecessary purpose, or in excess of the requirements of the county, within the same time and in the same manner as appeals are now taken from the action of the county board in the allowance or disallowance of claims against the county, and it shall not be necessary for such tax payer to appear before the county board at the time of the making of the levy, or prior thereto, in order to entitle him or it to such appeal. No appeal shall in any manner suspend the collection of any tax, or the duties of officers relating thereto, during the pendency of said appeal, and all taxes affected thereby which may be collected shall be kept by the treasurer in a special fund without distribution. The appellant shall, within the time provided by law for filing petitions in the case of appeals from the county court and justices of the peace, file his petition in the district court setting forth the levy or levies appealed from and the amount or extent to which the appellant shall claim such levy or levies are illegal or excessive, and to that extent and no farther shall such levy or levies be e[a]ffected by such appeal. At the time of filing such petition the appellant shall also file a copy thereof with the treasurer of the county and shall file in the district court an affidavit to the effect that he has filed a copy of such petition with said county treasurer. In case an appeal shall be taken to the supreme court from the decision of the district court the appellant shall, on or before the time such appeal is taken to the supreme court, file with the treasurer of the county a notice to the effect that such appeal to the supreme court has been taken, and also file in the district court a copy of such notice, verified by affidavit to the effect that such notice has been filed with the county treasurer. The county treasurer shall not be charged with such notice of appeal in case of a failure to file with him a copy of such petition and notice. The court shall hear the appeal as in equity and without a jury and determine whether or not the levy appealed from or any part thereof is for an unlawful or unnecessary purpose, or in excess of the requirements of the county, and shall make such reduction in the levy as the court shall from all the facts determine is proper, legal or necessary, and the decision of the court shall be certified by its clerk to the county clerk who shall correct the assessment books in his office accordingly. If the tax books have been delivered to the treasurer of the county for collection the collection of taxes before

the determination of such appeal in the district court, a copy of such decision shall be certified by the clerk of said court to the treasurer of said county who shall thereupon distribute or return to the parties entitled thereto the tax so held undistributed in accordance with such decision, and the treasurer shall correct the tax books in his office to conform to such decision, unless a further appeal be taken to the supreme court, in which case the treasurer shall hold said taxes until the final determination of such appeal in that court, and thereupon distribute or return the same in conformity to such decision. [Amended 1905, H. R. 51; Mch. 30, 1907, H. R. 202.]

5058 SEC. 137. [Labor tax.] Every male inhabitant in each road district, being over the age of twenty-one years and under the age of fifty years, except paupers, idiots, lunatics, and others specially exempted by law, shall be assessed by the assessors to pay a labor tax of two dollars and fifty cents. Such tax shall be payable in cash at the same time as the tax upon personal property is payable. Persons living in cities or incorporated villages who are liable by the provisions of the law regulating cities and villages, to pay the poll or labor tax, or work upon the streets thereof, shall not be assessed to pay the tax provided for in this section. [Amended 1907, H. R. 89.]

See sec. 73, chap. 78, as to road taxes.

5059 SEC. 138. [Taxes of cities, villiages, etc., certified to clerk.] The proper authorities of cities, villages, townships, and districts authorized by law to vote bonds or assess taxes, except such cities as are authorized by law to levy and collect their own taxes for municipal and school purposes, shall annually on or before the first Monday in June, certify to the county clerk the several amounts which they severally require to be raised by taxation, including all amounts due upon legal and valid bonds outstanding against such corporation; provided, that school district taxes shall be certified to the county clerk on or before the first Monday in July.

5060 SEC. 139. [Tax list.] After the equalization by the county and state boards as hereinbefore provided, and the levy of taxes made by them, and before the first day of November, the county clerk shall transcribe the assessments of the several precincts, townships, cities or villages into a suitable book to be provided at the expense of the state, properly ruled and headed with distinct columns, in which shall be entered the description of lands, number of acres and value, number of city and village lots and their value, value of personal property, and each description of tax, with a column for polls, one for the payment and a number of columns for delinquent taxes of previous years.

5061 SEC. 140. [Consolidated tax — Receipt — Tax list, how completed.] All taxes which are uniform throughout any precinct or township shall be formed into a single tax, entered upon the tax list in a single column and be denominated a consolidated tax, and each tax receipt shall show the percentage levied for each separate fund. The tax list shall be completed by the county clerk by carrying out in a column by itself the consolidated tax as provided in the preceding section, with the labor tax, school district tax, and any irregular tax,

each in separate columns, and after adding up each column of said taxes he shall, in an abstract at the end of each precinct, township, city, and village list, apportion the consolidated tax among the respective funds to which it belongs, according to the number of mills levied for each of said funds, showing a summary of each distinct tax.

5062 SEC. 141. [Tax list, when delivered — Warrant for collection.] The tax list shall be completed and delivered to the county treasurer on or before the first day of November annually, and before its delivery the county clerk shall attach a warrant under the seal of the county, which warrant shall be signed by said clerk, and shall in general terms command the said treasurer to collect the taxes therein mentioned according to law; but no informality therein, and no delay in delivering the same after the time above specified shall affect the validity of any taxes or sales, or other proceedings for the collection of taxes as provided for in this act. Whenever it shall be discovered that the warrant in this section provided for was not at the proper time attached to any tax list for any preceding year or years, in the hands of the county treasurer, the county clerk shall forthwith attach such warrant which shall be in the same form and shall have the same force and effect as if it had been attached to such tax list before the delivery thereof to the county treasurer.

5063 SEC. 142. [Tax list, form.] The tax list, when completed, shall be the property of the county, and shall be substantially in the following form, with such additions and amendments thereto as may be necessary to make it conform to law.

| STATE LEVY.       |            |
|-------------------|------------|
| Insane patients.. | ....Mills. |
| General.....      | ...."      |
| Sinking.....      | ...."      |
| School.....       | ...."      |
| University.....   | ...."      |
| State bonds.....  | ...."      |
| Total.....        | ....       |
| COUNTY LEVY.      |            |
| Poor fund.....    | ....Mills. |
| General.....      | ...."      |
| Special bridge..  | ...."      |
| Sinking.....      | ...."      |
| Int. Reg. bonds.. | ...."      |
| Total.....        | ....       |

TAX LIST.....PRECINCT,.....COUNTY, NEBRASKA.

FOR THE YEAR 19....

| Owner's Names. | Description of Lands or Town Lots. |                 |                |        |        |        | No. School District. | No. Road District. | State and County Consolidated Tax. | County and District Taxes. |                      |                           |               |           |  | Advertising. | Total. | No. of Receipt. | Remarks. |
|----------------|------------------------------------|-----------------|----------------|--------|--------|--------|----------------------|--------------------|------------------------------------|----------------------------|----------------------|---------------------------|---------------|-----------|--|--------------|--------|-----------------|----------|
|                | Part of section or part of town.   | Section or lot. | Town or block. | Range. | Acres. | Value. |                      |                    |                                    | Road Tax.                  | School District Tax. | School District Bond Tax. | Precinct Tax. | Poll Tax. |  |              |        |                 |          |
|                |                                    |                 |                |        |        |        |                      |                    |                                    |                            |                      |                           |               |           |  |              |        |                 |          |

5064 SEC. 143. [Entry, amount unpaid taxes.] As soon as the county treasurer shall receive the tax list of his county, he shall enter in the column opposite the description of each tract or parcel of land, the amount of unpaid taxes with the year or years in which the same were due, and the date of unredeemed sales, if any, for previous years on said lands.

5065 SEC. 144. [Tax collector—No demand for taxes.] The county treasurers of the several counties of this state shall be ex-officio county collectors of all taxes levied within their respective counties. No demand for taxes shall be necessary, but it shall be the duty of every person subject to taxation to attend at the treasurer's office and pay his taxes.

5066 SEC. 145. [Taxes, how paid — Warrants.] State warrants are receivable for the amount payable into the state treasury on account of tax levied for general state purposes. County warrants are receivable for the amount payable into the county treasury for general purposes. City warrants shall be received for the city general tax, village warrants for village general tax, and town warrants for the town general tax. State, county, city, village, or township taxes, levied for other special purposes, shall be paid only in lawful money of the United States, or by warrants drawn upon and payable out of the particular fund on account of which they are tendered. Road and labor taxes shall be paid as provided in the act on roads.

5067 SEC. 146. [Payment on part of tract.] The treasurer shall receive taxes on part of any lot, piece or parcel of land charged with taxes, when a particular specification of the part is furnished. If the tax on the remainder of such lot or parcel of land shall remain unpaid, the treasurer shall enter such specification in his return so that the part on which the tax remains unpaid may be clearly known. The tax may be paid on an undivided share of real estate. In such case the treasurer shall designate on his record upon whose undivided share the tax has been paid.

5068 SEC. 147. [Payment, entry—Receipt.] Whenever any person shall pay the taxes charged on any property, the treasurer shall enter such payment in his books, and give a receipt therefor, specifying for whom paid, the amount paid, what year paid for, and the property and value thereof on which the same was paid, according to its description in the treasurer's books, in whole or in part of such description as the case may be; and such entry and receipt shall bear the genuine signature of the treasurer or his deputy receiving such payment; and whenever it shall appear that any receipt for the payment of taxes shall be lost or destroyed, the entry so made may be read in evidence in lieu thereof. The treasurer shall enter the name of the owner or of the person paying the tax opposite each tract or lot of land when he collects the tax thereon, and the post office address of the person paying said tax. A statement shall be entered by the treasurer on such receipt showing the amount of unpaid taxes and the date of unredeemed tax sales, if any, for the previous year or years upon such land or town lot. If the treasurer shall fail or neglect to note on such receipt taxes or unredeemed tax sale as in this section provided, he shall be liable on his bond to the person injured thereby in the amount of the tax so omitted.

5069 SEC. 148. [Tax receipt, form.] The tax receipt shall be substantially in the following form, with such additions and amendments thereto as may be necessary to make it conform to law.



taxes in cities authorized by law to levy and collect their own taxes, shall become delinquent, and such delinquent taxes shall thereafter draw ten per cent. interest, which interest shall be collected the same as the tax so due.

**5072 SEC. 151. [County treasurer's cash book.]** The county treasurer is required to keep a cash book in which he shall enter an account of all moneys by him received, specifying in proper columns provided for that purpose, the date of payment, the number of the receipt issued therefor, by whom paid, and on account of what fund or funds the same was paid, whether state, county, school, road, sinking fund, or otherwise, and the amount paid in warrants, orders, or receipts, each in separate columns, and the total amount for which the receipt was given, in another column; and the treasurer shall keep his account of money received for and on account of taxes, separate and distinct from money received on any other account; and shall also keep his account of moneys received for and on account of taxes levied and assessed for any one year separate and distinct from those levied and assessed for any other year; and all entries in said cash book of money received for taxes shall be in the numerical order of the receipts issued therefor.

**5073 SEC. 152. [Entry of payment on tax list.]** Whenever any taxes are paid the treasurer shall write on the tax lists, opposite the description of real estate or personal property whereon the same were levied the word "paid" together with the date of such payment, and the name of the person paying the same, which entry shall be prima facie evidence of such payment.

**5074 SEC. 153. [Personal taxes charged to treasurer.]** Upon delivery to the county treasurer of the tax list as herein provided, all personal taxes levied in the county shall be charged to him and he and his bondsmen shall be liable therefor, unless the same are collected, or he shall show a compliance with the requirements herein made.

**5075 SEC. 154. [Delinquent personal taxes — Notice — Collection.]** The county treasurer is hereby required, during the month of December of each year after the personal taxes for the year have become delinquent, to notify by mail all persons of the amount of their delinquent personal tax, and that unless the same is paid by February first next following, distress warrant will be issued therefor. The treasurer shall, on and after the first day of February next after the personal taxes for the last preceding year have become delinquent, collect the same, together with interest and costs of collection, by distress and sale of personal property belonging to the person against whom levied in the manner provided by law for the levy and sale of personal property on execution. Distress warrants shall be issued against all persons having delinquent personal tax for the year 1903 and for each year thereafter, and each such warrant shall include all delinquent personal taxes of the person against whom issued, unless such person shall, on or before February 1st, file with the treasurer an affidavit that he is unable, by reason of poverty, to pay any such tax, in which case distress warrants shall not issue until ordered by the County Board.

**5076 SEC. 155. [Distress warrants — Service — Return.]** All distress warrants shall be served by the treasurer, or his deputy, or by a

special deputy appointed for that purpose. They shall be returned within sixty days from the date of issue, with an endorsement thereon showing that the taxes therein described have been collected or that, upon diligent search, no property could be found whereof to collect the same. For making a false return the officer shall be liable for double the amount of taxes, with interest and costs, to be recovered in the name of the county.

5077 SEC. 156. [**Same—Fees—Commissions.**] All fees allowed for issuing distress warrants, levy and return of the same, in the cases above provided, shall be twenty-five cents for issuing each warrant; fifty cents for levy, and not exceeding five cents a mile for each mile actually and necessarily traveled by such officer on each warrant, but when the officer has more than one warrant in his hands for service he shall charge only for the mileage actually and necessarily traveled in serving all of said warrants, in which case the mileage so charged shall be prorated among such warrants. Commissions shall be allowed in addition on all taxes collected by distress and sale as follows: on all sums not exceeding \$100.00, five cents on each dollar; on all sums exceeding \$100.00 four cents on each dollar. All fees, mileage and commissions shall be taxed to the parties against whom the distress warrants run and shall be collected as the original tax.

5078 SEC. 157. [**Same—Record—Return, “no property”—Collection by suit.**] The county treasurer shall, in a book containing the personal tax list, in columns provided therefor, keep a record of the date of issue of each distress warrant, and of the return thereon showing in detail the amount collected, or the fact that no personal property belonging to the tax delinquent was found, and all distress warrants shall, upon their return, be filed and kept by the treasurer as a part of the records of his office. The collection of any item of said taxes, or the showing by affidavit of poverty as herein provided, duly approved, or the return of a distress warrant showing no property found, shall relieve him and his bondsmen from responsibility of that item of taxes. Upon the return as aforesaid of any distress warrant uncollected it shall be the duty of the treasurer, when directed so to do by the County Board, to commence suit and prosecute the same to judgment, and no property whatever shall be exempt from levy and sale upon process issued on such judgment.

Direction of county board may be waived. *Moore v. Furnas Co.*, 78 Neb., 558.

5079 SEC. 158. [**Removal of taxpayer—Duty of treasurer.**] It shall be the duty of the treasurer or his deputy in making the return of the distress warrant to note in such return the county to which any such delinquent tax payer may have removed with the date of his removal, if he shall be able to ascertain such fact, and it is hereby made his duty to make diligent inquiry therefor. It shall be the duty of the several county treasurers in the state immediately after the return of such distress warrant to issue an alias distress warrant to the treasurer of any county in this state into which such tax payer may have removed, or may reside, or in which his personal property may be found, who shall proceed to collect said taxes the same as upon execution, together

with his costs, and after so collecting to forward the same with such warrant and his return thereon to the treasurer of the proper county.

**5080 SEC. 159. [Distress warrant — Sale.]** When any goods and chattels have been taken on any distress warrant, they shall be returned to the owner by the officer having distrained them immediately upon payment of the taxes due with interest and costs, but upon such owner's refusal or neglect to make such payment, or to give a good and sufficient bond for the delivery of said goods and chattels, the officer distraining shall keep them at the expense of the owner, and shall give notice of the time and place of their sale within five days after the taking, in the same manner as upon execution in justice court, and the time of sale shall not be more than twenty days from the day of taking, but he may adjourn the sale from time to time not exceeding five days in all. In case of adjournment he shall put up a notice thereof at the place of sale. Any surplus remaining above the taxes, charges of the keeping and fees for sale, shall be returned to the owner, and the treasurer shall on demand render an account in writing of the sale and charges.

**5081 SEC. 160. [Removal of building when tax delinquent.]** It shall be unlawful for any person to tear down or remove any building situated on any real estate, while there are any delinquent taxes unpaid thereon. Any person so offending shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding one hundred dollars and costs, and shall moreover be liable to the county in a civil action for the amount of all delinquent taxes on such real estate. The lien of such taxes shall follow and adhere to such building or the materials thereof when[where]ever situate, or into whatever form the same may be converted. It shall be the duty of the county treasurer whenever advised of the tearing down or removal of any such building to issue a distress warrant for the amount of the delinquent taxes on such real estate, and to follow such building or material, and to levy on and sell the same as personal property to satisfy such taxes.

**5082 SEC. 161. [Failure of agent to pay tax of corporation.]** When any corporation doing business in this state shall fail or neglect to pay any tax assessed or charged against it, when the same shall have become delinquent, the county treasurer shall notify any agent or officer of said company in the county where such tax is delinquent, that the same is delinquent, and the amount due, and shall further notify the officer or agent to pay over all moneys that may be in his hands, or that may afterwards come into his hands, belonging to such corporation, not exceeding the amount of tax due, to such county treasurer; and if such agent or officer shall fail to pay over said money to the county treasurer, he shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than fifty dollars, nor more than five hundred dollars.

**5083 SEC. 162. [Injunction—Replevin—Tax paid under protest.]** No injunction shall be granted by any court or judge in this state to restrain the collection of any tax, or any part thereof hereafter levied, nor to restrain the sale of any property for the non payment of any such tax, except such tax or the part thereof enjoined, be levied or assessed for

an illegal or unauthorized purpose; nor shall any person be permitted to recover by replevin, or other process, any property taken or restrained by the county treasurer for the non payment of any tax except such tax be levied or assessed for illegal or unauthorized purpose; but in every case the person or persons claiming any tax, or any part thereof, to be for any reason invalid, who shall pay the same to the county treasurer, may proceed in the following manner, viz: First. If such person claim a tax, or any part thereof, to be invalid for the reason that the property upon which it was levied was not liable to taxation, or that said property has been twice assessed in the same year and taxes paid thereon, he may pay such taxes under protest to the county treasurer, or other proper authority, and it shall be the duty of the treasurer, or other proper authority receiving such tax, to give a receipt therefor, stating thereon that they were paid under protest, and the grounds of such protest, whether or not taxable or twice assessed, and taxes paid thereon. If such taxes are paid to the proper authority, other than the county treasurer, such persons so receiving them shall, within ten days thereafter, deliver such taxes, or such part thereof as are paid under protest to the county treasurer, together with a copy of the receipt given for the same, and the county treasurer shall retain the money so paid under the protest until otherwise directed by order of the County Board. Within thirty days after paying such taxes the person paying them shall file a statement in writing, duly verified, with the County Board, setting forth the amount of tax paid under protest, the grounds of such protest, and shall attach thereto the receipt taken for said taxes. Whereupon at the first meeting of the County Board thereafter, they shall inquire into the matter, and if they shall find either that the property upon which taxes were levied was not liable for taxation, or that it had been twice assessed in the same year, and taxes paid thereon, they shall issue an order to the county treasurer to refund said taxes, stating therein what sum shall be refunded, and if they shall find that the grounds of such protest are not true, they shall issue an order to the county treasurer to dispose of said money in the same manner, as though it had not been paid under protest. Appeals may be taken from such decisions in the same manner and within the times as appeals are now taken from the action of the County Board in allowance or disallowance of claims against the county; and if such an appeal be taken the county treasurer shall retain such taxes until the case is finally determined. Provided, That he shall in all cases retain said money until the time for an appeal shall have elapsed. If an appeal from the decision of the county board be taken, and upon the final determination thereof their decision be affirmed, the treasurer shall at once carry the order of said board into effect; but if their decision be reversed, they shall issue a new order to the treasurer conforming to the decree of the court finally determining the case. In all cases where the treasurer shall refund such taxes he shall write opposite such taxes in the tax list the words "Erroneously taxed—refunded." Second. If such person claim the tax or any part thereof to be invalid for the reason that it was levied or assessed for an illegal or unauthorized purpose, or for any other reason except as hereinbefore set forth, when he shall have paid the same to the treasurer, or other

proper authority, in all respects as though the same was legal and valid, he may, at any time, within thirty days after such payment, demand the same in writing from the treasurer of the state, of the county, city, village, township, district, or other subdivision, for the benefit, or under the authority, or by the request of which the same was levied, and if the same shall not be refunded within ninety days thereafter, may sue such county, city, village, township, district, or other subdivision, for the amount so demanded; and if upon the trial it shall be determined that such tax, or any part thereof, was levied or assessed for an illegal or unauthorized purpose, or was for any reason invalid, judgment shall be rendered therefor, with interest, and the same shall be collected as in other cases.

The levying and transferring of a fund levied to the limit is for an illegal purpose. *Lincoln v. C., B. & Q.*, 77 Neb., 99.

**5084 SEC. 163. [Claim for taxes paid under protest.]** When any demand to refund taxes paid is made upon any treasurer, as provided in the second method of procedure indicated in the preceding section, such treasurer shall transmit a copy of the same to the authorities authorized by law to audit and pay accounts against the state, county, city, township, village, or district, as the case may be, who shall pass upon the same as upon any other claim, but no claim for refunding such taxes shall be paid unless it appears to the satisfaction of such authorities that the sum was levied for an illegal or unauthorized purpose.

**5085 SEC. 164. [Remitting taxes.]** No county or town board, city council, or village trustees, shall have power to release, discharge, remit, or commute any portion of the taxes assessed or levied against any person or property within their respective jurisdictions for any reason whatever. Any taxes so discharged, released, remitted, or commuted, may be recovered by civil action from the members of any such board, council, or trustees, and the sureties on their official bonds at the suit of any citizen of the county, township, city, or village, as the case may be, and when collected shall be paid into the proper treasury. Nothing in this section contained shall be construed to prevent the proper authority from refunding taxes paid, as provided in sections 162 and 163 of this chapter, nor to interfere with the powers of any officers, or board, sitting as a board, for the equalization of taxes.

**5086 SEC. 165. [Taxes stricken from list.]** Whenever it shall appear from the return of the treasurer that any person charged with taxes on personality has removed out of the county, or has deceased and left no property out of which the taxes can be paid, or if from any cause it is impossible to collect such taxes, it shall be the duty of the County Board to cause the same, after the expiration of two years in which the treasurer shall use due diligence to collect the same, to be stricken from the tax list, and the county clerk shall certify the amount so stricken off to the auditor who shall credit the county therewith in adjustment of the accounts of the county treasurer.

**5087 SEC. 166. [Auditor's list of lands taxable.]** A list of lands becoming taxable for the first time in each county of the state shall be

procured by the state auditor from the proper land officers, at the best prices for the state, and a list of the lands becoming so taxable in each the several counties shall be forwarded by the auditor to the county clerk of each county on or before the fifteenth day of January of each year.

**5088 SEC. 167. [Treasurer's warrant book.]** Each county treasurer is required to keep a book called the "Warrant Book", in which he shall enter every state, county, or other warrant or order by him paid, or received in payment of taxes from any person, specifying the date on which the same was received and canceled, from whom received, the payee or person in whose favor it was drawn, its number and date, the amount for which it was drawn, the sum for which it was received, and the interest due thereon, and the treasurer shall keep the account of warrants and orders by him received for and on account of taxes, separate and distinct from such as are by him paid in cash.

**5089 SEC. 168. [Treasurer not to purchase warrants.]** No county, city, township, or village treasurer shall either directly or indirectly contract for or purchase any warrant, or order, or orders issued by the county of which he is treasurer, at any discount whatever upon the sum due on such warrant or order, or orders; and if any county, city, township, or village treasurer shall so contract for or purchase any such order or warrant, he shall not be allowed in settlement of the amount of said order or warrant, or any part thereof, and shall also forfeit the whole amount due on such order or warrant, to be recovered by civil action, at the suit of the State of Nebraska, for the use of the school fund of the county.

**5090 SEC. 169. [Statement of uncollected personal taxes and errors.]** On or before the first day of October annually, and at such other times as the County Board may direct, the county treasurer shall make out and file with the county clerk a statement in writing, setting forth in detail the name of each person charged with personal property tax which he and his deputies have been unable to collect, by reason of the removal or insolvency of the person charged with such tax, the value of the property and the amount of tax, the cause of inability to collect such tax, in each separate case, in a column provided in the list for that purpose. The treasurer shall, at the same time, make out and file with the county clerk a similar detailed list of errors in assessment of real estate, and errors in footing of tax books, giving in each case a description of the property, the valuation and amount of the several taxes and special assessments, and cause of error. The truth of the statement contained in such lists shall be verified by affidavit of the county treasurer.

**5091 SEC. 170. [Credit on delinquent taxes—Settlement.]** If any lands or lots shall be delinquent for taxes or special assessments the treasurer shall be entitled to a credit in his final settlement for the amount of the several assessments thereon, the county to allow the amount of printer's fees thereon, and be entitled to said fees when collected. The county treasurer shall settle with the County Board on the first Wednesday after the first Tuesday in January, and on the first Monday in July in each year, and at such other times as the

County Board may direct, at which times the county treasurer shall file with the county clerk a statement showing the amount of money collected since last settlement, from what source derived, amount of moneys paid out, and for what purpose, together with the vouchers for the same, the amount of taxes due and unpaid, and the amount of money on hand belonging to the several funds; but the county treasurer shall not be entitled to credit for delinquent personal property tax until he has filed with the clerk an affidavit that he has fully complied with the provisions of this act relating to the giving of notice and issuing of distress warrants, and been unable to collect the tax due thereon by reason of a want of personal property of the owner thereof, and that to the best of his knowledge and belief no personal property of any such owner is in the county.

**5092 SEC. 171. [Treasurer's account with clerk.]** If there be no session of the County Board held at the proper time for settling and adjusting the accounts of the county treasurer, it shall be the duty of the treasurer to file the lists with the county clerk, who shall examine said lists and correct the same, if necessary, in like manner as said board is required to do. The county clerk shall make an accurate computation of the value of the property and the amount of the delinquent tax and special assessments returned, for which the treasurer is entitled to credit.

**5093 SEC. 172. [Clerk's certificate to auditor.]** The county clerk shall immediately, in either case, certify to the auditor of public accounts the valuation of property and the amount of taxes thereon, for which the treasurer may be allowed credit.

**5094 SEC. 173. [Same to local authorities.]** The county clerk shall also at the same time certify to the several authorities or persons with whom the county treasurer is to make settlement, showing the valuation of property and the amount of taxes and special assessments due thereon allowable to said treasurer in the settlement of his several accounts.

**5095 SEC. 174. [Credit on final settlement — Examination of accounts.]** The auditor and other proper authorities or persons shall in their final settlements with the treasurer allow him credit for the amount so certified; but if the auditor or such other proper authorities or persons shall have reason to believe that the amount stated in said certificate is not correct, or that the allowance was illegally made, he or they shall return the same for correction; and when the same shall appear to be necessary in the opinion of the auditor or such other proper authorities or persons, he or they shall designate and appoint some competent person to examine the treasurer's books and statement of settlement, and the person so designated and appointed shall have access to the treasurer's books and papers appertaining to such treasurer's office or settlement for the purpose of making such examination.

**5096 SEC. 175. [Final order — Corrections.]** In all cases when the adjustment is made with the county clerk, the County Board shall, at the first session thereafter, examine such settlement and if found correct, shall enter an order to that effect; but if any omission or error is

found said board shall cause the same to be corrected and a correct statement of the facts in the case forwarded to the auditor and other proper authorities or persons, who shall correct and adjust the treasurer's accounts accordingly.

**5097 SEC. 176. [Settlement for state taxes.]** The county clerk shall make out and deliver to the county treasurer, as soon as adjustment is made with the County Board or county clerk, annually, the statements, certificates, and lists appertaining to the settlement of the accounts of such treasurer; which statements, certificates, and lists shall be made out in proper form under his seal of office on blanks which it is hereby made the duty of the auditor to furnish annually for that purpose. The treasurer shall deliver the same to the auditor and make a final settlement of his accounts on or before the first day of February in each year; In all cases where the statements, certificates and lists appertaining to the final settlement of a treasurer are on file with the auditor, on or before the first day of February, the auditor shall not charge interest on the balance found due on the account of such treasurer, for fifteen days after mailing said auditor's statement showing balance due the state on such treasurer's account; That this section shall not be held to receive any treasurer from the payment of interest charged on his account by reason of failure to make payment to the state, at other time or times, as required by this or any other act of the Legislature of this state.

**5098 SEC. 177. [Duplicate statement to auditor.]** The county clerk shall furnish a duplicate copy of said statement duly certified, whenever requested so to do by the auditor. If the statement of credits herein required, or any of the items therein, are objected to by the auditor he shall return the statement to the county clerk, stating his objections, and said clerk shall examine and correct or explain the same satisfactorily and return the statement to said auditor.

**5099 SEC. 178. [Overpayment refunded.]** If any treasurer shall have paid, or may hereafter pay, into the state treasury, any greater sum or sums of money than are legally and justly due from such treasurers after deducting abatements and commissions, the auditor shall issue his warrant for the amount so overpaid, which shall be paid out of the fund or funds so overpaid.

**5100 SEC. 179. [When payments made to state treasurer.]** The treasurers of the several counties shall pay into the state treasury all funds in their hands belonging thereto, on or before the tenth day of February and the tenth day of October in each year, and at such other times as the state treasurer shall require, and the sums so paid in shall be the identical state warrants, if any received by the treasurer for payment of the taxes, or in coin or in treasury notes of the United States.

**5101 SEC. 180. [Same, how made — Duplicate receipt.]** Upon ascertaining the amount due to the state from any treasurer or other person, the auditor shall give such person a statement of the amount to be paid, and upon the presentation of such statement to the state treasurer, and the payment of the sum stated to be due, the treasurer shall give duplicate receipts therefor, one of which shall be filed in the auditor's office, and entered in a book to be kept for that purpose, and

the other shall be countersigned by the auditor and delivered to the person making the payment, and no payment shall be considered as having been made until the treasurer's receipt shall be countersigned by the auditor as aforesaid.

**5102 SEC. 181. [Interest on money due state.]** Any treasurer failing to pay into the state treasury the amount due the state, on his account for state and other taxes at the time or times required for this act, shall pay interest at the rate of ten per cent. per annum from the time the same became due until the same is paid; and it shall be the duty of the auditor to charge such interest to the account of every treasurer failing to pay at the time or times so required by this act. In no case shall the auditor be permitted to remit such interest, unless satisfactory evidence from the County Board is presented to him, showing by official action taken by such board lawful excuse why the treasurer could not pay over in part or in whole the amount due on such treasurer's account with the state.

**5103 SEC. 182. [Auditor's certificate of settlement.]** Upon the final settlement of any account with the state, the auditor shall give the treasurer duplicate certificates, under his seal of office, setting forth that said treasurer has settled and paid into the state treasury the full amount due from him on said account, and it shall be the duty of the treasurer to file one of said certificates in the office of the county clerk within twenty days after receiving the same. If any treasurer shall neglect or refuse to file one of said certificates as above required, the county clerk shall leave a written notice at the office of said treasurer requiring him to appear before the County Board at their next session, and show cause why he has not filed the certificate aforesaid; and if the treasurer shall not show that he has paid over the full amount due from him, and make a final settlement with the state and county, or that he has a lawful excuse for failing to do so, his office as treasurer shall be declared vacant by said board, and the same filled as in other cases of vacancy by reason of death or otherwise.

**5104 SEC. 183. [Treasurer to report and pay cities, etc.]** The county treasurer shall report and pay over the amount of tax and special assessments due to towns, districts, cities, villages, corporations, and persons, collected by him when demanded by the proper authorities or persons.

**5106 SEC. 184. [Failure to make report and payment.]** Any county treasurer failing to make reports and payments hereinbefore required for five days after demand made as aforesaid, the auditor or such other authorities or persons may bring suit upon his bond.

**5107 SEC. 185. [Same—Vacancy.]** If any county treasurer fails to account for and settle as required in the preceding section his office may be declared vacant by the County Board, and the vacancy filled as hereinbefore provided.

**5108 SEC. 186. [Liability of treasurer on bond.]** The bond of every county treasurer shall be held to be security for the payment by such treasurer to the state treasurer and the several cities, towns, villages and the proper authorities and persons respectively, of all taxes and special assessments which may be collected or received by him on

their behalf, by virtue of any law in force at the time of giving such bond, or that may be passed or take effect thereafter.

**5109 SEC. 187. [Suit against treasurer by auditor.]** Upon the failure of any county treasurer to make settlement with the auditor, the auditor shall sue the treasurer and his surety upon the bond of such treasurer, or sue the treasurer in such form as may be necessary, and take all such proceedings, either upon such bond or otherwise, as may be necessary to protect the interest of the state.

**5110 SEC. 188. [Jurisdiction and power of court.]** Such suit shall be brought in behalf of the state in the district court of the county in which such treasurer holds office or resides, and process may be directed to any county in the state. If any proceeding against any officer or person whose duty it is to collect, receive, settle for, or pay over any of the revenues of the state, whether the proceeding be by suit on the bond of such officer or person, or otherwise, the court in which such proceeding is pending shall have power, in a summary way, to compel such officer or person to exhibit on oath a full and fair statement of all moneys by him collected or received, or which ought to be settled for or paid over, and to disclose all such matters and things as may be necessary to a full understanding of the case, and the court may, upon hearing, give judgment for such sum or sums of money as such officer or person is liable in law to pay. And if in any suit upon the bond of any such officer or person, he or his sureties, or any of them shall not for any reason be liable upon the bond, the court may, nevertheless, give judgment against such officer and such of his sureties as are liable, for the amount he or they may be liable to pay, without regard to form of the action or pleadings.

**5111 SEC. 189. [Bond sued by city, etc.]** Cities, towns, villages, or corporate authorities, or persons aggrieved may prosecute suit against any treasurer or other officer collecting or receiving funds for their use, upon his bond, in the name of the State of Nebraska for their use, in any court of competent jurisdiction, whether the bond has been put in suit at the instance of the auditor or not. Cities, towns, villages and other corporate authorities or persons shall have the same right in any suits or proceedings in their behalf as is provided in case of suits by or in behalf of the state.

**5112 SEC. 190. [New proceedings when records destroyed.]** When assessment rolls or treasurers books, in whole or in part, of any county, town, city, village, or district shall be lost or destroyed by any means whatever, a new assessment, or new books, as the case may require, shall be made under direction of the County Board. Said board shall, in such cases fix reasonable times and dates for performing the work of assessment, equalization, levy, extension, and collection of taxes, and paying over the same, or making new books as the circumstances of the case may require. All the provisions of this chapter shall apply to the dates fixed by the County Board in the same manner as they apply to the dates for similar purposes as fixed by this chapter. The County Board is hereby fully empowered to select and appoint persons where it may find the same necessary to carry into effect the provisions of this section.

**5113 SEC. 191. [Locality not paying its share of tax.]** Whenever it shall come to the knowledge of the auditor that any county, township, city, district, town, or any well defined locality thereof, or any particular class of property therein, may hereafter be released from any cause whatever from its just proportion of state taxes said auditor shall cause suit to be commenced in an action in the name of the state of Nebraska, either against the municipality or against the property unjustly released from taxation, or the owners thereof to recover the amount of such tax in the district court of the proper county, and when judgment is recovered in such case the auditor shall levy a rate of tax on the equalized valuation of all property or particular class of property in such county, township, city, district, town, or locality, as the case may be, as will pay the state the amount of such judgment and costs; and it shall be the duty of the county clerk of the proper county to extend such rate of tax with the state tax of the year directed in the auditor's certificate. Any county clerk neglecting or refusing to extend such rate certified to him by the auditor shall be removed from office, and in addition thereto shall be subject to a fine not exceeding \$5000, and damages caused by such neglect or refusal to be recovered by the auditor in an action in the name of the state of Nebraska in the district court of the proper county. In case where the auditor and proper local authorities of the proper municipality can arrange to make such levy to reimburse the state in such cases without suit the auditor is authorized to pursue such course.

**5114 SEC. 192. [Auditor—Books—Blanks—Advice.]** It shall be the duty of the auditor to furnish suitable blanks for the settlements of county treasurers with said auditor, and all other books and blanks required by this act not otherwise herein provided for, which shall be paid by the state. Such books and blanks shall be uniform, and the auditor shall from time to time furnish county officers with the necessary instructions to carry the foregoing provision of this act into effect, and all such instructions shall be strictly complied with by the officers in the performance of their respective duties. He shall give his opinion and advice on all questions of doubt as to the true intent and meaning of said provision.

#### SALE OF REAL ESTATE FOR TAXES.

**5115 SEC. 193. [Sale, when held.]** All real estate on which the taxes shall not have been paid as provided by law on or before the first Monday of November after they become delinquent, shall be subject to sale as herein provided.

**5116 SEC. 194. [List of lands—Notice of sale—Continuance.]** The county treasurer shall, not less than four nor more than six weeks prior to the first Monday of November in each year, make out a list of all lands and town lots subject to sale, and the amount of all delinquent taxes against each with interest to the date of sale, describing such land and town lots as the same are described on the tax list, with an accompanying notice stating that so much of each tract of land or town lot described in said list as may be necessary for that purpose will, on the first Monday of November next thereafter, be sold by him at public auction at his office for the taxes, interest and costs

thereon. Such sale may be continued from day to day until all such lands and town lots have been offered.

**5117 SEC. 195. [Description of lands.]** In describing lands in such notice, and in all proceedings relative to assessing, advertising or selling the same for taxes it shall be sufficient to designate the township, range, sections or part of section, and also the number of lots and blocks by initial letters, abbreviations and figures.

**5118 SEC. 196. [Publication of list and notice.]** The county treasurer shall cause said list and accompanying notice to be published once a week for three consecutive weeks prior to the date of sale, commencing the first week in October, in a newspaper published in said county having a general circulation therein, which newspaper shall be designated by the County Board, and if there be published in said county newspapers printed in the German, Swedish or Bohemian languages, having been regularly published in said county for ten successive years or more, and having a daily, semi-weekly or weekly circulation among regular, bona fide subscribers of fifteen hundred copies or more, the said notice shall also be published in a newspaper in each of said languages, to be designated by the Board of county Commissioners; Provided, however, that if the total cost of such publications in all of said newspapers shall exceed the total amount herein provided to be taxed against the lands and lots so advertised, then the said publication shall be made only in the said newspaper printed in the English language, and shall also cause to be posted up in some conspicuous place in his office, a copy of said list and notice. The treasurer shall add to each description of land so advertised, other than town lots, the sum of twenty cents, and for each town lot the sum of ten cents, to defray the expenses of advertising, which sum shall be added to the amount due on said land or town lot for taxes and collected in the same manner as taxes.

Designation of newspaper. *Getzchmann v. Board*, 76 Neb., 648.

**5119 SEC. 197. [Publication, affidavit.]** Ev[er]y printer who shall publish such lists and notice shall, immediately after the last publication thereof, furnish to the treasurer of the proper county an affidavit of such publication made by the publisher, manager or foreman of such newspaper to whom the facts of publication are known, and no printer shall be paid for such publication who shall fail to furnish such affidavit within ten days after the last publication. The county treasurer shall also make, or cause to be made, an affidavit or affidavits of the publication of such list and notice as above required, all of which shall be carefully preserved by him in his office.

**5120 SEC. 198. [Sale.]** On the day designated in the notice of sale the county treasurer shall commence the sale of those lands and town lots on which the taxes and charges have not been paid, and shall continue the same from day to day, Sundays and holidays excepted, until each parcel, or so much thereof as shall be sufficient to pay the taxes and charges thereon, including the cost of advertising, shall have been sold or offered for sale.

**5121 SEC. 199. [Purchaser—Homestead.]** The person who offers

to pay the amount of taxes due on any parcel of land or town lot for the smallest portion of the same, shall be the purchaser, and when such person shall designate the smallest portion of any tract of land or town lot for which he will pay the amount of taxes assessed against any such tract or lot, the portion thus designated shall be considered an undivided portion. If no person bid for a less quantity than the whole, the treasurer may sell any tract of land or town lot to any one who will take the whole and pay the taxes and charges thereon. In all cases where the homestead is listed separately as a homestead it shall be sold only for the taxes delinquent thereon.

**5122 SEC. 200. [Payment.]** The person purchasing any parcel of land or town lot or portion thereof, shall pay to the treasurer the amount of taxes, interest and cost thereon, which payment may be made in the same fund receivable by law in the payment of taxes. If any purchaser shall fail to so pay, then the parcel of land or town lot shall at once again be offered as if no such sale had been made.

**5123 SEC. 201. [County may purchase.]** At all sales provided by law the County Board may purchase for the use and benefit, and in the name of the county, any real estate advertised and offered for sale when the same remains unsold for want of bidders. The county treasurer shall issue certificates of purchase of the real estate so sold in the name of the county. Such certificates shall remain in the custody of the county treasurer, who shall at any time assign the same to any person wishing to buy for the amount expressed on the face of the certificate and interest thereon at the rate of ten per cent from the date thereof. Such assignment shall be attested by the endorsement of the county clerk of his name on the back of such certificate, and such endorsement shall be made when requested by the county treasurer.

**5124 SEC. 202. [City or village may purchase.]** Whenever any real estate subject to sale for taxes shall be within the corporate limits of any city or village, such city or village shall have the same power to purchase said real estate, and in like manner as the County Board may purchase as specified in the preceding section; and the treasurer of said city or village may assign the certificate of purchase by endorsement of his name on the back thereof when directed so to do by the city council, or trustees of his village. No such sale shall be made to any city or village by the county treasurer when such lands have been previously sold to the county, but in any such case the city or village may purchase the tax certificate held by the county.

**5125 SEC. 203. [Same—Treasurer when to account to state.]** Whenever real estate is purchased by a County Board, or by the city or village treasurer, the county treasurer shall not be required to account to the state treasurer, or to any person, for the amount of taxes due, until the County Board or city or village authorities have sold the certificate or certificates of purchase of such real estate, or until by redemption, or foreclosure proceedings, he shall have received the money thereon.

**5126 SEC. 204. [Sale book.]** The treasurer shall keep a sale book showing in separate columns the number and date of each certificate of sale, the name of the owners or owner if known, the description of

each tract of land or town lot, the name of the purchaser, the total amount of taxes and costs for which sold, the amount of subsequent taxes paid by the purchaser and date of payment, to whom assigned, and the amount paid therefor, name of person redeeming and date of redemption, total amount paid for redemption, name of person to whom conveyed, and date of deed.

**5127 SEC. 205. [Return of sale.]** On or before the first Monday of December following the sale of real property, the treasurer shall file in the office of the county clerk a return thereon as the same shall appear on the treasurer's sale book, and such return duly certified shall be evidence of the regularity of the proceedings.

**5128 SEC. 206. [Private sale.]** After the sale shall have closed, and the treasurer shall have made his return thereof to the county clerk as provided in the preceding section, if any real estate remains unsold for want of bidders therefor, the county treasurer is authorized and required to sell the same at private sale at his office to any person who will pay the amount of taxes, penalty, and costs thereof for the same, and make out duplicate certificates of sale and deliver one to the purchaser and the other to the county clerk. Such certificate shall contain the additional statement that such lands have been offered at public sale but not sold for want of bidders, and also the words "sold for taxes at private sale." The treasurer is further authorized and required to sell as aforesaid all real estate in the county on which taxes remain unpaid and delinquent for any previous year or years.

**5129 SEC. 207. [Treasurer failing to attend sale—Malfeasance.]** If any treasurer shall fail to attend any sale of lands as required by this act, either in person or by deputy, he shall be liable to a fine of not less than fifty nor more than three hundred dollars, to be recovered by an action in the district court in the name of the county against the treasurer and his bondsmen. If such officer or deputy shall sell, or assist in selling any real property, knowing the same to be not subject to taxation, or that the taxes for which the same is sold have been paid, or shall knowingly and wilfully sell, or assist in selling, any real property for the payment of taxes to defraud the owner of such real property, or shall knowingly execute a deed for property so sold, he shall be liable to a fine of not less than one thousand nor more than three thousand dollars, or to imprisonment not exceeding one year, or to both fine and imprisonment, and to pay the injured party all damages sustained by any such wrongful act, and all such sales shall be void.

**5130 SEC. 208. [Treasurer purchasing at sale.]** If any county treasurer shall hereafter, either directly or indirectly, be concerned in the purchase of any real property sold for the payment of taxes he shall be liable to a penalty of not more than one thousand dollars to be recovered in an action in the district court brought in the name of the county against such treasurer and his bondsman, and all such sales shall be void.

**5131 SEC. 209. [Certificate of purchase—Form—Lien of purchaser.]** The purchaser of any tract of land sold by the county treasurer for taxes, will be entitled to a certificate in writing, describing the lands so purchased, the sum paid, and the time when the purchaser will be

entitled to a deed, which certificate shall be signed by the treasurer, in his official capacity, and shall be presumptive evidence of the regularity of all prior proceedings. The purchaser acquires a perpetual lien of the tax on the land, and if, after the taxes become delinquent he subsequently pays any taxes levied on the same, whether levied for any year or years previous or subsequent to such sale, he shall have the same lien for them, and may add them to the amount paid by him in the purchase. The treasurer shall make out a tax receipt and duplicate for the taxes on the real estate mentioned in such certificate, the same as in other cases, and shall write thereon, "sold for taxes at public sale," or "sold for taxes at private sale," as the case may be. If any person shall become the purchaser of more than one parcel of real estate, he may have the whole included in one certificate, but each parcel shall be separately described, and the amount paid may be entered in gross in said certificate. Such certificate shall be substantially in the following form, to-wit:

COUNTY TREASURER'S CERTIFICATE OF TAX SALE.

State of Nebraska,.....County, ss:—I,....., treasurer of the county of ....., in the State of Nebraska, do hereby certify that the following described real estate in said county and state, to-wit: (describe the same) was, on the ..... day of ....., 19.., duly sold by me in the manner provided by law for the delinquent taxes for the years 19.., ..... thereon, amounting to ..... dollars, including interest thereon, and costs allowed by law, to ..... for the sum of ..... dollars. I further certify that unless redemption is made of said real estate in the manner provided by law the said ....., heirs or assigns, will be entitled to a deed therefor on and after the ..... day of ....., A. D. 19.., on surrender of this certificate, and compliance with the provisions of this act.

In witness whereof, I have hereunto set my hand this ..... day of ....., A. D. 19..

(L. S.) .....Treasurer.

**5132 SEC. 210. [Certificate assignable.]** The certificate of purchase shall be assignable by endorsement, and an assignment thereof shall vest in the assignee, or his legal representative, all the right and title of the original purchaser, and the statement in the treasurer's deed of the fact of the assignment shall be presumptive evidence thereof.

**5133 SEC. 211. [Treasurer's fees.]** The treasurer is authorized to demand fifty cents for each deed or certificate made by him on such sale, together with the fee of the notary public or other officer acknowledging the deed, but any number of parcels of land bought by any one person may be included in one deed, as may be desired by the purchaser; and whenever the treasurer makes a deed to any land sold for taxes, he shall enter an account thereof in the sale book opposite the description of the land so conveyed.

**5134 SEC. 212. (Redemption.)** The owner or occupant of any land sold for taxes, or any person having a lien thereon or interest therein, may redeem the same at any time before the delivery of tax deed by the

County Treasurer by paying the County Treasurer, for the use of such purchaser, his heirs or assigns, the sum mentioned in his certificate, with interest thereon at the rate of fifteen per cent per annum from the date of purchase to date of redemption, together with all other taxes subsequently paid, whether for any year or years previous or subsequent to said sale, and interest thereon at the same rate from date of such payment to date of redemption. The treasurer shall enter a memorandum of such redemption in the sales book, and give a receipt therefor to the person redeeming the same, for which he may charge a fee of twenty-five cents, and shall hold the redemption money subject to the order of the purchaser, his assignee, agent or attorney. The lands of minors, or any interest they may have in any lands sold for taxes, may be redeemed at any time during the time of redemption above described or at any time before such minor becomes of age and during two years thereafter; and the lands of idiots or insane persons so sold, or any interest they may have therein, may be redeemed at any time within five years after such sale. Any redemption made shall inure to the benefit of the person having the legal or equitable title to the property redeemed, subject to the right of the person making the same to be reimbursed by the person benefited. Amended 1905, S. F. 215]

Applies to administrative, not judicial, sales for taxes. *Wood v. Speck*, 78 Neb., 435.

**5135 SEC. 213. [Sale for subsequent taxes.]** If any purchaser of real estate sold for taxes under the provisions of this chapter shall suffer the same to be again sold for taxes, before the expiration of the last day of the second annual sale thereafter, such purchaser shall not be entitled to a deed for such real property until the expiration of a like term from the date of the second sale, during which time the land shall be subject to redemption upon the terms and conditions prescribed in this chapter. Any person claiming an undivided part of any land sold for taxes, may redeem the same on paying such proportion of the purchase money, interest, costs, and subsequent taxes as he shall claim of the land sold. The treasurer shall make a proper entry of such partial redemption in his sale book, and no deed thereafter given shall convey a greater interest than that remaining unredeemed.

**5136 SEC. 214. (Conditions Precedent to Deed.)** No purchaser at any sale for taxes, or his assignee, shall be entitled to a deed for the land or lot so purchased, unless such purchaser or assignee, at least three months before applying for such deed, shall serve or cause to be served on every person in actual possession or occupancy of such land or lot and also upon the person in whose name the title to said land appears of record in the register of deeds office of said county, if upon diligent inquiry he can be found in the county, a notice stating when such purchaser purchased the land or lot, the description thereof, in whose name assessed, for what year taxed or specially assessed, and that after the expiration of three months from the date of the service of said notice the deed will be applied for. The service of said notice shall be proved by affidavit and said notice and affidavit shall be filed and preserved in the office of the county treasurer. For each service of such notice a fee of one dollar shall be allowed. The amount of such fees shall be noted

by the treasurer in the sales book opposite the tract of land described in such notice and shall be collected by the treasurer in case of redemption for the benefit of the holder of the certificate. [Amended 1905, S. F. 214.]

5137 SEC. 215. [Same.] If no person is in the actual possession or occupancy of such land or lot, and the person in whose name the title to said land appears of record in the register of deed's office in said county can not, upon diligent inquiry, be found in the county, then such purchaser or his assignee shall publish such notice in some newspaper published in said county and having a general circulation therein. If no newspaper is printed in the county, then in a newspaper published in this state nearest to the county in which said lands or lot is situated. Said notice shall be inserted three consecutive weeks, the first time not more than five months and the last time not less than three months before the time of redemption shall expire. Proof of such application shall be made by filing in the county treasurer's office the affidavit of the publisher, manager or foreman of said newspaper, that, to his personal knowledge, said notice was published for the time and in the manner provided herein, setting out a copy of said notice and the dates upon which the same was published. Said affidavit shall be preserved as a part of the files of said office. Any publisher, manager or foreman of a newspaper knowingly or negligently making a false affidavit regarding any such matters shall be guilty of perjury, and shall be punished accordingly.

5138 SEC. 216. [Fees, publication of notice.] In case any person shall be compelled to publish such notice in a newspaper, then, before any person who may have a right to redeem such land or lots from such sale shall be permitted to redeem he shall pay the officer or person who by law is authorized to receive such redemption money, the amount paid for publishing such notice, for the use of the person compelled to publish the same. The fee for such publication shall not exceed one dollar for each tract or lot contained in such notice, and not more than three dollars for any one notice. The cost of making such publication shall be noted by the treasurer in the sales book opposite the tract or lot of land described in said notice.

5139 SEC. 217. [Deed, when delivered.] At any time within three years after the expiration of two years from the date of sale of any real estate for taxes or special assessments, if the same shall not have been redeemed, the county treasurer, on request, and on production of the certificate of purchase, and upon compliance with the provisions of this act, shall execute and deliver to the purchaser, his heirs or assigns, a deed of conveyance for the real estate described in such certificate.

5140 SEC. 218. [Deed—Form.] The deed so made by the county treasurer shall be under his official seal of office and acknowledged by him before some officer authorized to take the acknowledgment of deeds, and when so executed and acknowledged shall be recorded in the same manner as other conveyances of real estate, and when so recorded shall vest in the grantee, his heirs and assigns, the title of

the property therein described. Such conveyance shall be substantially in the following form:

Know all men by these presents: That whereas, at a ..... sale of real estate for the non-payment of taxes, made in the county of ..... on the ..... day of ....., A. D. 19...., the following described real estate situate in said county, to-wit: (here describe real estate conveyed), was sold to ..... for the delinquent taxes of the year ..... and, Whereas, the same not having been redeemed from such sale, and it appearing that the holder of the certificate of purchase of said real estate has complied with the laws of the State of Nebraska necessary to entitle, ..... to a deed of said real estate: Now, therefore, I, county treasurer of said county of ....., in consideration of the premises, and by virtue of the statutes of the State of Nebraska in such cases made and provided, do hereby grant and convey unto ..... his heirs and assigns, forever, the said real estate hereinbefore described subject, however, to any redemption provided by law.

Given under my hand and official seal this.....day of....., A. D. 19....

.....County Treasurer.

State of Nebraska, }  
.....County. } ss.

On this ..... day of ....., A. D., 19...., before me a ....., in and for said County, personally appeared the above named....., treasurer of said County, personally known to me to be the treasurer of said county, at the date of the execution of the foregoing conveyance, and to be the identical person whose name is affixed to, and who executed said conveyance as treasurer of said county, and acknowledged the execution of the same to be his voluntary act and deed as treasurer of said county, for the purposes therein expressed.

Witness my hand and official seal the day and year last above written.

.....  
.....

5141 SEC. 219. [Evidence recorded.] The register of deeds shall record the evidence upon which the tax deeds are issued, and be entitled to the same fee therefor that may be allowed by law for recording deeds, and the county treasurer shall deliver the same to the register of deeds for that purpose. In case of the loss of any certificate, on being fully satisfied thereof by due proof, and upon bond being given to the State of Nebraska in a sum equal to the value of the property conveyed, as in cases of lost notes or other commercial paper, the county treasurer may execute and deliver the proper conveyance, and file such proof and bond with the register of deeds to be recorded as aforesaid. . .

5142 SEC. 220. [Deeds, evidence of what.] Deeds made by the county treasurer as aforesaid shall be presumptive evidence in all the courts of this state, in all controversies and suits in relation to the

rights of the purchaser, his heirs or assigns, to the land thereby conveyed, of the following facts: 1. That the real property conveyed was subject to taxation for the year or years stated in the deed; 2. That the taxes were not paid at any time before the sale; 3. That the real property conveyed had not been redeemed from the sale at the date of the deed; 4. That the property had been listed and assessed; 5. That the taxes were levied according to law; 6. That the property was sold for taxes as stated in the deed; 7. That the notice had been served or due publication made as required in this act before the time of redemption had expired; 8. That the manner in which the listing, assessment, levy, and sale were conducted was in all respects as the law directed; 9. That the grantee named in the deed was the purchaser or his assignee; 10. That all the prerequisites of the law were complied with by all the officers who had, or whose duty it was to have had, any part or action in any transaction relating to or affecting the title conveyed, or purporting to be conveyed by the deed, from the listing and valuation of the property up to the execution of the deed, both inclusive, and that all things whatsoever required by law to make a good and valid sale, and to vest the title in the purchaser, were done.

5143 SEC. 221. [Requisites to defeat title.] In all controversies and suits involving the title to real property claimed and held under and by virtue of a deed made substantially as aforesaid by the treasurer the person claiming the title adverse to the title conveyed by such deed shall be required to prove, in order to defeat the said title, either that the said real property was not subject to taxation for the years or year named in the deed, that the taxes had been paid before the sale, that the property had been redeemed from the sale according to the provision of this chapter, and that such redemption was had or made for the use and benefit of persons having the right of redemption under the laws of this state, or that there had been an entire omission to list or assess the property, or to levy the taxes, or to sell the property; but no person shall be permitted to question the title acquired by a treasurer's deed without first showing that he, or the person under whom he claims title had title to the property at the time of the sale, or that the title was obtained from the United States or this state after the sale, and that all taxes due upon the property had been paid by such person or the persons under whom he claims title as aforesaid; provided, that in case where a person had paid his taxes, and through mistake in the entry made in the treasurer's books or in the receipt, the land upon which the taxes were paid was afterwards sold, the treasurer's deed shall not convey the title; provided further, that in all cases where the owner of lands sold for taxes shall resist the validity of such tax title, such owner may prove fraud committed by the officer selling the same or in the purchaser to defeat the same, and if fraud is so established such sale and title shall be void.

Purpose of provision as to payment of taxes stated. *Thomas v. Farmers*, 76 Neb., 568.

5144 SEC. 222. [County to hold purchaser harmless — Treasurer liable for errors.] When by mistake or wrongful act of the treasurer or other officer land has been sold on which no tax was due at the time, or whenever land is sold in consequence of error in describing such land

in the tax receipt, the county is to hold the purchaser harmless by paying him the amount of principal, interest and costs to which he would have been entitled had the land been rightfully sold, and the treasurer or other officer shall be liable to the county therefor upon his official bond; or the purchaser, or his assignee may recover directly of the treasurer or other officer, in an action on his official bond.

**5145 SEC. 223. [School, and university land.]** Whenever any school or university land bought on credit is sold for taxes, the purchaser at such tax sale shall acquire only the interest of the original purchaser in such land, and no sale of such lands for taxes shall prejudice the rights of the state therein, or preclude the recovery of the purchase money or interest due thereon; and in all cases where the real estate is mortgaged or otherwise encumbered to the school or university fund, the interest of the person who holds the fee shall alone be sold for taxes and in no case shall the lien or interest of the state be affected by any sale of such encumbered real estate made for taxes.

**5146 SEC. 224. [Land not subject to taxation sold.]** Whenever it shall be made to appear to the satisfaction of the county treasurer, either before the execution of a deed for real property sold for taxes, or, if a deed be returned by the purchaser, that any tract or lot has been sold which was not subject to taxation, or upon which the taxes had been paid previous to the sale, he shall make an entry opposite such tract or lot on the sale book that the same was erroneously sold, and such entry shall be evidence of the fact therein stated. And in such cases the purchase money shall be refunded to the purchaser.

**5147 SEC. 225. [Acts of officers de facto valid.]** In all suits and controversies involving the question of title to real property held under and by virtue of a treasurer's deed, all acts of assessors, treasurers, clerks, supervisors, commissioners, and other officers de facto shall be deemed and construed to be of the same validity as acts of officers de jure.

**5148 SEC. 226. [Land, assessed in wrong name.]** No sale of real property for taxes shall be void or voidable on account of the same having been assessed in any other name than that of the rightful owner, if the said property be in other respects sufficiently described.

**5149 SEC. 227. [Books, records, evidence.]** The books and records belonging to the offices of the county clerk and county treasurer, or copies thereof, properly certified, shall be presumptive evidence of the sale of any real property for taxes, the redemption thereof, or the payment of taxes thereon.

**5150 SEC. 228. [Irregularities in assessments.]** Irregularities in making or equalizing assessments, or in making the returns thereof, shall not invalidate the sale of any real estate when sold by the county treasurer for delinquent taxes due thereon, nor in any manner invalidate the tax levied on any property or charged against any person.

**5151 SEC. 229. [Other irregularities.]** The following defects, omissions, and circumstances occurring in the assessment of any property for taxation, or in the levy of taxes, or elsewhere in the course of the proceedings from and including the assessment and to and in-

cluding the execution and delivery of the deed of the property sold for taxes, shall be taken and deemed to be mere irregularities within the meaning of the preceding section. The failure of the assessor to take or subscribe an oath or attach one to any assessment roll, the omission of a dollar mark or other designation descriptive of the value of figures used to denote an amount assessed, levied, or charged against property, or the valuation of any property upon any record, the failure or neglect of the county treasurer to offer any real estate for sale for delinquent taxes thereon at the time provided by law, unless the same be sold sooner than is provided by this act, and the failure of the treasurer to adjourn such sale from time to time as required by law, or any irregularity or informality in such adjournment, the failure of the county treasurer to offer any real estate at public sale which may afterwards be sold at private sale, and any irregularity or informality in the manner or order in which real estate may be offered at public sale, the failure to assess any property for taxation or to levy any tax within the time provided by law, and any irregularity, informality or omission in any such assessment book, tax collector's book, or other record of any real or personal property assessed for taxation, or upon which any tax is levied, or which may be sold for taxes, provided such description be sufficiently definite to enable the county treasurer, or other officer, or any person interested, to determine what property is meant or intended by the description, and in such case a defective or indefinite description on the assessment or treasurer's book, or in any notice or advertisement may be made definite by the treasurer in the deed by which he may convey such property, if sold for taxes, by conveying by proper and definite description the property so defectively or indefinitely described.

**5152 SEC. 230. [Limitation of action, land sold for taxes.]** No action for recovery of real estate sold for the non-payment of taxes shall be brought after five years from the execution and recording of the treasurer's deed, unless the owner is at the time of the sale a minor, insane person, or convict in the penitentiary, in which case such action must be brought within five years after such disability is removed.

#### **FORECLOSURE OF TAX LIENS, TAX SALE CERTIFICATES AND TAX DEEDS.**

**5153 SEC. 231. [Lien by county—Foreclosure.]** Every county in this state shall have a lien upon each tract or lot of land for all taxes due thereon whether such taxes are for one or more years, or are due to the state, county, township, school district, road district, city, village or other municipal subdivisions of said county, and may, at any time after such tract or lot of land has been offered for sale for such taxes or any part thereof and not sold for want of bidders, proceed to foreclose said lien and cause said tract or lot to be sold for the satisfaction thereof in the same manner and with like effect as if such lien were a mortgage for the amount thereof executed to said county by the owner of said tract or lot of land. In case of the foreclosure of said lien and sale thereunder, the owner of any tract or lot of land so sold, shall have the right to redeem the same from such sale within two years from the date thereof by paying the amount for which

sold with interest and costs to the date of redemption. If said land is not redeemed on or before two years from the date of such sale, the purchaser shall be entitled to a deed therefor pursuant to said decree, provided he has complied with Sections 214, and 215 of this act prior to the expiration of the two years from the date of said sale.

Provisions available for collection of past delinquent taxes. *Holthaus v. Adams Co.*, 74 Neb., 861.

**5154 SEC. 232. [Foreclosure by assignee.]** Whenever the county board of any county, or the proper authorities of any city or village, or any person, shall have purchased any real estate for delinquent taxes of any kind, or become the owner by assignment of any tax sale certificate, or tax deed, such county, city, village or person shall be deemed to be the assignee and owner of all the liens for taxes of the state, county, city, village, school district, town, and other municipal sub-divisions for which such tract or lot is sold, and may instead of demanding a deed therefor as provided in this act, or in case a deed shall have been issued by surrendering the same in court, proceed by suit in equity in the district court of the county in which such land is situated to foreclose such lien, and cause such real estate to be sold for the satisfaction thereof, and all prior or subsequent tax liens thereon, in all respects as far as practicable in the same manner and with like effect as is provided for the foreclosure of real estate mortgages.

**5155 SEC. 233. [Same, when brought.]** Such action shall only be brought within three years after the expiration of the time for redemption from such tax sale, except as in this section hereinafter provided, and the tax sale certificate or tax deed shall be presumptive evidence of all the facts necessary to entitle the plaintiff to a decree for the amount appearing to be due thereon, with interest at the rate per cent per annum required to be paid for redemption from such tax sale, and the amount found due in such decree shall draw interest at the same rate. Such action for the foreclosure of such tax sale certificate may be brought by any county, city or village immediately after the purchase thereof, and when brought before the time for redemption from such tax sale has expired, the owner of the lands described in such tax sale certificate, or any person having a lien thereon or interest therein, may redeem the same, at any time within two years from the date of sale under such foreclosure proceedings, by paying to the clerk of the district court, for the use of the purchaser at such foreclosure sale, his heirs or assigns, the amount for which such land sold at such foreclosure sale, with interest thereon at the rate of fifteen per cent per annum from the date of such purchase at such foreclosure sale to the date of redemption, and the costs of suit, and, if the same be redeemed, the clerk of the district court shall certify such fact to the county treasurer, who shall make a memorandum of such redemption in the sale book of his office. The sheriff or officer conducting such sale shall at once pay the proceeds thereof to the clerk of the district court, and if the lands described in such tax sale certificate shall sell at such foreclosure sale for more than the amount of taxes found due in such decree, with interest thereon and costs of the suit, the excess shall be applied in the manner provided

by law for the disposition of the surplus in the foreclosure of mortgages on real estate. The clerk of the district court shall, immediately upon the receipt thereof, pay the proceeds of such foreclosure sale to the county treasurer of such county or the county in which such city or village is situated, not however exceeding in amount the taxes found due in such decree with interest thereon and fee for certificate of sale, giving the said county treasurer a certified statement thereof with a copy of such tax sale certificate, and the same shall be by the said county treasurer applied and distributed as provided by law. If such land is not redeemed on or before two years from the date of such foreclosure sale, the purchaser, his heirs or assigns, shall be entitled to the confirmation of such foreclosure sale and a deed for premises, provided the provisions of Sections [214, 215] 10613 and 10614 of Cobbe's Annotated Statutes have been complied with, prior to the expiration of the two years from the date of such foreclosure sale. The provisions of the law for the protection of purchasers at tax sales shall apply to purchasers at foreclosure sales provided for in this section. Neither the clerk of the district court, nor the sheriff or officer conducting the sale, shall be entitled to any commission on the moneys received and paid out under this section. [Amended 1905, S. F. 63.]

"An Act to amend Section [233] 10632, Chapter 49, of Cobbe's Annotated Statutes of Nebraska for the year 1903, which chapter is entitled, "Revenue" so as to give counties, cities and villages the right to foreclose tax sale certificates immediately after the purchase thereof, and to prescribe

rates of interest on taxes due on lands described in such tax sale certificates, and to repeal said Section 10632, as it now exists, and all acts and parts of acts in conflict with this act." Laws, 1905, H. R. 63. In effect July 1, 1905.

**5156 SEC. 234. [Joinder, causes of action—Designation of lands—Locality may purchase.]** In all suits for foreclosure of tax liens provided for in this act, the plaintiff may include in one petition as many tax sale certificates, tax deeds, or tax liens as he or it is the owner of, regardless of whether they are upon the same or different tracts of real estate, and whether the land covered by them is owned by the same or different persons; and it shall be sufficient in the petition and in all proceedings in such foreclosure suit, to designate the township, range, section, or part of section, and also the number and description of any lot or block by initial letters, abbreviations, and figures; and the county, city, or village, when plaintiff in any such action, may purchase any real estate sold by order of the court therein.

**5157 SEC. 235. [Joinder of parties.]** The plaintiff may join all owners of real estate covered by his or its tax sale, certificates, tax deeds, or tax liens, as defendants, whether jointly or separately interested in said real estate, or any part thereof, and may unite in such action all persons having or claiming any interest in any of the real estate described in the petition. The defendants may plead jointly or separately to said petition and the court shall try and determine all issues between the plaintiff and each and all of said defendants, and shall in its decree ascertain and determine the amount of taxes, interest and costs chargeable to each particular tract or lot of real estate, and state the name or names of all defendants who have an interest in each tract or lot of real estate upon which the lien is fixed by its decree, and shall award to the plaintiff an attorney's fee equal

to ten per cent. of the amount found due, which shall be taxed as part of the costs in the action and apportioned equitably as other costs. The fact that the owners of separate or different lots of real estate are joined as defendants in one action shall not constitute a defense on the part of any one or more of said defendants, nor a misjoinder of defendants or causes of action.

Mortgagee not necessary party. *Hall v. Moore*, 75 Neb. 693.

**5158 SEC. 236. [Same—Unknown owners.]** The plaintiff may also at his option make any or all of the parcels of land described in his petition a defendant, and in case the owner of any such parcel of land shall be unknown and can not be found, may proceed against the land itself, but in such case the service must be as in the case of a non-resident defendant.

**5159 SEC. 237. [Order of sale.]** Upon the expiration of thirty days from and after such decree the plaintiff shall be entitled to an order of sale of the lands remaining unredeemed. No lot or parcel of land shall be sold for taxes due upon any other lot or parcel of land, nor shall any surplus proceeds of sale of one lot or parcel of land be applied to the payment of taxes or charges against any other lot or parcel of land; provided, where the same defendant is the owner of two or more lots or parcels of land, the court may in its decree order that any surplus proceeds of sale of one lot or parcel of land shall be applied to the payment of taxes and costs against any other lot or parcel of land owned by the same defendant, where no rights of third persons will be affected thereby, and that only so much of the land so owned by one defendant shall be sold as may be necessary to satisfy all taxes and costs charged against all the lands owned by the same defendant.

**5160 SEC. 238. [Proceeds of sale prorated.]** If in any foreclosure suit brought under the provisions of this act any tract or lot of land does not sell for enough to pay all taxes due thereon with interest and costs, the proceeds of such sale shall be divided pro rata among the several municipal subdivisions to which such taxes were due, and said tract or lot of land shall be forever relieved from the lien of all taxes for which it was sold, and upon confirmation of sale the clerk of the District court shall certify to the county treasurer the year or years for the taxes of which each tract or lot of land was sold, and the treasurer shall thereupon cancel the taxes for such years.

**5161 SEC. 239. [Redemption.]** Any person entitled to redeem any lot or parcel of land may do so at any time after decree of foreclosure and before sale, by paying to the clerk of the court the amount found due against the same with interest and costs to date of redemption. If redemption is made after sale and before confirmation such person must pay the sum for which the land was sold, with interest and costs to that of confirmation.

**5162 SEC. 240. [Remedy cumulative.]** The remedy provided for the enforcement of tax liens by foreclosure shall be held and construed to be cumulative, and not to be exclusive of any other remedy pro-

vided by law for the collection of taxes or the enforcement of tax liens.

**5163 SEC. 241. [Neglect to enforce lien.]** If the owner of any tax sale certificate shall fail or neglect either to demand a deed thereon, or to commence an action for the foreclosure of the same within the time herein limited, such tax certificate shall cease to be valid, or of any force or effect whatever, and the real estate covered thereby shall be forever released and discharged from the lien of all taxes for which the same was sold.

**5164 SEC. 242. [Saving clause.]** Nothing in this act shall be construed to release, discharge, or in any manner affect the validity or the collection of any tax heretofore assessed and levied under the revenue laws in force prior to the taking effect of this act, nor shall the same affect pending actions founded thereon or causes of action which may have accrued; but all rights in relation to such taxes and the collection thereof and all rights that may have accrued to persons under the revenue laws of this state are hereby saved and reserved.

Extent of act stated. *Whiffin v. Higginbotham*, 80 Neb. 468.

**5165 SEC. 243. [Act in effect, when.]** This act shall take effect and be in force from and after the first day of September, 1903.

**5166 SEC. 244. [Acts repealed.]** All of Articles I, II, III, IV and V and Sections 4, 5, 6, 7, 8, 9, 10, 11, and 12 of Article VII, of Chapter seventy-seven (77) Compiled Statutes of Nebraska, for the year 1901 are hereby repealed.

**5167 SEC. 245. [Foreclosure decrees legalized.]** Whereas, the authorities of vari[o]us counties in the State of Nebraska relying on statements in the printed decisions of the Supreme Court of this State, assumed that said counties had the right to commence and prosecute actions in the district courts of their several counties to collect by foreclosure and sale of real property all taxes assessed and delinquent thereon, without having first secured a tax certificate for such taxes, and such suits have been prosecuted to judgment, the property therein described sold, and the proceeds of such sale less the costs thereof have been paid to said municipalities and used for the benefit thereof, and where such sales did not afford sufficient money to pay said taxes in full, such proceeds after payment of costs have been prorated between the several funds represented in such foreclosures: And, whereas, the Supreme Court of this state has recently by its judgment decided that said actions could not be maintained except said counties first purchase said taxes at treasurer's sale and later bring action on said tax certificate: And, whereas, many tracts and lots of land have been sold under the proceedings herein recited before said later decision of said Supreme Court; Now, therefore, all judgments, orders, decrees and findings that have been made by any district court in the State of Nebraska, in any action wherein any county in the state of Nebraska has prosecuted actions to foreclose tax liens and sell lots or lands in Nebraska for the taxes levied thereon and delinquent, without having first purchased a tax certificate from the county treasurer, but on the contrary were based solely on

the taxes assessed and delinquent, and purported to have been brought for said county in its own behalf, and as trustee for the State of Nebraska and the several municipalities interested in such taxes and all sheriff's deeds made in said proceeding, be, and the same are hereby legalized and made valid, to the same extent and purpose as though the statute had specifically authorized such foreclosures without the purchase of a treasurer's tax certificate. Provided however, nothing herein contained shall be construed to deprive the owners of the fee of said real estate, or anyone interested therein, within two years from the passage of this act from redeeming said real estate from said proceedings and decree by paying the amount of tax levied and delinquent against his property with 10 per cent annual interest added to such taxes, and the value of all improvements made by the purchaser. [1903, H. R. 28.]

"An act to legalize and make valid all orders, judgments, decrees and findings that have been made by any district court in the state of Nebraska, in actions brought by any county in said state to foreclose alleged liens for taxes assessed and levied on lands and lots in said counties for State, County, School and Municipal purposes, and which actions were not based on tax certificates, but on the unpaid and

delinquent taxes, and wherein said counties, foreclosed for such county, and as trustee for the State of Nebraska and the several school district and various municipalities entitled to such tax to legalize all sheriff's deeds made in said proceeding, and to repeal all acts and parts of acts inconsistent herewith." Laws, 1903, H. R. 28. Took effect April 8, 1903. The case referred to is *Logan Co. v. Carnahan*, 66 Neb. 685.

**5167a SEC. 246. [Decedents' taxes — Treasurer as administrator.]** That any County Treasurer in any County where there were personal assets of any deceased personal tax debtor, as a part of his duty, as such when ordered to collect taxes by suit or under distress warrant issued to him from any other County Treasurer, in case no estate is opened by personal representatives, heirs or next of kin of decedent, shall in his own name, if in the County where taxes were assessed, or in name of the Board of the County from which the distress warrant issues to him, take out letters of administration upon estate of deceased tax debtor. [1905, H. R. 242.]

"An Act to increase the power of County Treasurers for collection of personal taxes."

Laws, 1905, H. R. 242. In effect July 1, 1905.

## ARTICLES I-V. [Repealed 1903, H. R. 344, sec. 244.]

### ARTICLE VI.—PAYMENT OF JUDGMENTS AGAINST MUNICIPALITIES.

**5168 SECTION 1. [Duty of officers.]** That whenever any judgment shall be obtained in any court of competent jurisdiction in this territory for the payment of a sum of money against any county, township, school district, road district, town or city board of education, or against any municipal corporation, or when any such judgment has been recovered and now remains unpaid, it shall be the duty of the county commissioners, school district board of education, city council, or other corporate officers, as the case may require, to make provisions for the prompt payment of the same. [12th Sess., 1867, § 1, 13.]

ART. VI. "An act to provide for the payment of judgments recovered against municipal corporations." Laws, 12th Sess. Ter. 1867, 13. G. S. 935. Took effect Feb. 18, 1867. Not repealed by sec. 69, art. I, chap.

14 (Comp. Stats., 1899). *Dawson Co. v. Clark*, 58 Neb. 756. Levy in excess of constitutional limit forbidden. *State v. Sheldon*, 53 Id., 365. Tax must be within constitutional limit. *Chase Co. v. C., B. & Q.*

R. R., 58 Id., 274. Cities, school districts. Dawson Co. v. Clark, 58 Id., 756. An order of a county board allowing a claim against the county is not a judgment. Custer Co. v.

C., B. & Q. R. R., 62 Id., 657. Judgment has the effect only of an audited claim. State v. Royse, 71 Id., 1.

**5169 SEC. 2. [Same—Payment—Tax.]** If the amount of revenue derived from taxes levied and collected for ordinary purposes shall be insufficient to meet and pay the current expenses for the year in which the levy is made, and also to pay the judgment remaining unpaid, it shall be the duty of the proper officers of the corporation, against which any such judgment shall have been obtained and remaining unsatisfied, to at once proceed and levy and collect a sufficient amount of money to pay off and discharge such judgments.

**5170 SEC. 3. [Levy of tax.]** The tax shall be levied upon all the taxable property in the district, county, township, town, or city, bound by the judgment, and shall be collected in the same manner and at the same time provided by law for the collection of other taxes.

**5171 SEC. 4. [Same.]** The corporate officers whose duty it is to levy and collect taxes for the payment of the current expenses of any such corporation, against which a judgment may be so obtained, shall also be required to levy and collect the special tax herein provided for, for the payment of judgments.

**5172 SEC. 5. [Action against officers—Mandamus.]** If any such corporate authorities whose duty it is, under the provisions of this act, to so levy and collect the tax necessary to pay off any such judgment, shall fail, refuse, or neglect to make provisions for the immediate payment of such judgments, after request made by the owner, or any person having an interest therein, such officers shall become personally liable to pay such judgments, and the party or parties in[terested] may have an action against such defaulting officers to recover the money due on the judgment, or he or they having such interest may apply to the district court of the county in which the judgment is obtained, or to the judge thereof in vacation, for a writ of mandamus to compel the proper officers to proceed to collect the necessary amount of money to pay off such indebtedness, as provided in this act; and when a proper showing is made by the applicant for said writ, it shall be the duty of the court or judge, as the case may be, to grant and issue the writ to the delinquents, and the proceedings to be had in the premises, shall conform to the rules and practice of said court, and the laws of this territory, in such cases made and provided.

#### ARTICLE VII.—MISCELLANEOUS PROVISIONS.

**5173 SECTION 1. [Revenue arising from internal improvements—How set apart.]** That where any township, precinct, incorporated city or village in this state has heretofore or may hereafter issue any bonds to aid in construction or completion of any works of internal improvement, the revenues which shall arise from the taxation of such internal improvement shall be set apart forever to pay the interest and principal upon said bonds until the same shall be fully paid, and in the event that such revenues shall not be sufficient to pay such bonds at their maturity, such revenues shall still be set apart and shall be credited

to the general fund required from such township, precinct, incorporated city or village, before such tax list is extended until the same shall be fully re-imbursed. [1875, § 1, 110. Amended 1889, chap. 24.]

SECS. 1-3. "An act setting aside the revenue arising from the taxation of works of internal improvement to pay the bonds issued to construct or complete the same." Laws, 1875, 110. Took effect Feb. 20, 1875. The provisions of this act, so far as they have the effect to exempt works of internal improvement from the payment of a

lawfully levied school tax, are in contravention of sec. 1, art. 9, also sec. 4, art. 8, constitution. Word "means" includes moneys arising from annual taxation for school purposes levied under legislative authority. Effect of act on bonds issued before Nov. 1, 1875, discussed. *State v. Walsh*, 31 Neb., 469.

5174 SEC. 2. [Assessment of certain property for taxation.] That at the time the county commissioners furnish the assessor with blank forms and notices necessary for the proper assessment of the property in the several precincts, they shall also furnish the assessor of each township, precinct, incorporated city or village with a list of all the property in such township, precinct, incorporated city or village for which such bonds have been issued; and the assessor shall assess such property separately and enter the same in a separate book, provided for that purpose; *Provided, however*, That railroads shall be assessed as now provided in section seventeen of chapter sixty-six of the general statutes, entitled "Revenue." [1875, § 2, 110.]

5174a SEC. 3. [Revenues to be kept in a separate fund.] The treasurer having control of such revenues shall keep the same in a separate fund for the purpose aforesaid. [Id., § 3.]

SECS. 4-12. [Repealed by Laws 1903, H. R. 344, § 244.]

5175 SEC. 13. [Vacated town sites — Penalties remitted.] That whenever town sites have been located, surveyed, and laid out in this state under any law of the state or the territory of Nebraska, or under any law of the United States, and such town site, or any part thereof, has been vacated or abandoned as such, all taxes levied on the lots or subdivisions therein vacated may be liquidated by payment of the original amount of such taxes without interest or penalties.

"An act to provide for the collection of taxes in certain cases." Laws, 1889, chap. 77. Took effect July 1, 1889.

#### ARTICLE VIII.—GIFTS—LEGACIES—INHERITANCES.

5176 SECTION 1. [Property taxable — Rate.] All property, real, personal and mixed which shall pass by will or by the intestate laws of this state from any person who may die seized or possessed of the same while a resident of this state, or, if decedent was not a resident of this state at the time of his death, which property or any part thereof shall be within this state, or any interest therein or income therefrom, which shall be transferred by deed, grant sale or gift made in contemplation of the death of the grantor, or bargainor or intended to take effect, in possession or enjoyment after such death, to any person or persons or to any body politic or corporate in trust or otherwise, or by reason thereof any person or body corporate shall become beneficiary entitled in possession or expectation to any property or income thereof, shall be and is subject to a tax, at the rate hereinafter specified to be paid to the treasurer of the proper county for the use of

the state and all heirs, legatees, and devisees, administrators, executors and trustees shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed. When the beneficial interests to any property or income therefrom shall pass to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of the son, or husband of the daughter, or any child or children adopted as such in conformity with the laws of the State of Nebraska, or to any person to whom the deceased for not less than ten years prior to death stood in the acknowledged relation of a parent, or to any lineal descendant born in lawful wedlock, in every such case the rate of tax shall be one dollar on every one hundred dollars of the clear market value of such property received by each person, and at the same rate for every less amount; provided, that any estate which may be valued at a less sum than ten thousand dollars shall not be subject to any such duty or the taxes, and the taxes to be levied in the above case only upon the excess of ten thousand dollars received by each person; when the beneficial interests to any property or income therefrom shall pass to or for the use of any uncle, aunt, niece, nephew, or other lineal descendant of the same, in every such case the rate of such tax shall be two dollars on every one hundred dollars of the clear market value of such property received by each person on the excess of two thousand dollars so received by each person; In all other cases the rate shall be as follows: on each and every hundred dollars of the clear market value of all property and at the same rate for any less amount, up to five thousand dollars, two dollars; on all estates of over five thousand dollars and not exceeding ten thousand dollars, three dollars; on all estates of over ten thousand dollars not exceeding twenty thousand dollars, four dollars; on all estates of over twenty thousand dollars and not exceeding fifty thousand dollars, five dollars; and on all estates over fifty thousand dollars, six dollars; provided that an estate in the above case which may be valued at a sum less than five hundred dollars shall not be subject to any duty or tax. [1901, chap. 54. Amended 1905, H. R. 90; 1907, S. F. 41.]

ART. VIII. "An act to tax gifts, legacies and inheritances in certain cases and to provide for the collection of the same."

Laws, 1901, chap. 54. In effect June 28, 1901. Not a property tax. Constitutional. State v. Vinsonhaler, 74 Neb., 675.

#### 5177 SEC. 2. [Estates for life — Remainder — Tax when payable.]

When any person shall bequeath or devise any property or interest therein or income therefrom to mother, father, husband, wife, brother, or sister, the widow of the son, or the lineal descendant, during the life or for a term of years with remainder to the collateral heir of the decedent, or to the stranger in blood or to a body corporate at their decease on the expiration of such term, the said life estate or estates for a term of years shall be subject to the tax prescribed in Section 1, and the property so passing shall be appraised immediately after the death at what was the fair market value thereof at the time of the death of the decedent in the manner hereinafter provided, and after deducting therefrom the value of said life estate, or term of years, the tax prescribed by this act on the remainder shall be immediately

due and payable to the treasurer of the proper county, the interest thereon shall be and remain a lien on said property until the same is paid; Provided, That the person or persons or body corporate beneficially interested in the property chargeable with said tax elect not to pay the same until they have come into actual possession or enjoyment of such, in that case such person or persons or body corporate shall give a bond to the state of Nebraska in a penal sum three times the amount of the tax arising upon such estate, with such sureties as the county judge may approve, conditioned for the payment of said tax at such time or period as they or their representatives may come into the actual possession or enjoyment of said property, which bond shall be filed in the office of the clerk of the proper county; Provided, Further, that such person shall make a full verified return of said property to said county judge, and file the same in his office within one year from the death of the decedent, and within that period enter into such securities and may renew the same for five years.

**5178 SEC. 3. [Taxes when payable—Interest.]** All taxes imposed by this act, unless otherwise herein provided for, shall be due and payable at the death of the decedent, and interest at the rate of seven per cent per annum shall be charged and collected therefrom for such time as such taxes are not paid; Provided, That if said tax is paid within six months from the accruing thereof, interest shall not be charged or collected thereon, and in all cases where the executors and administrators or trustees do not pay such tax within one year from the death of the decedent they shall be required to give a bond in the form and to the effect prescribed in section two of this act, for the payment of said tax together with interest.

**5179 SEC. 4. [Executors, administrators, duties.]** Any administrator, executor or trustee having any charge or trust in legacies or property for distribution subject to said tax, shall deduct the tax therefrom, or if the legacy or property be not money, he shall collect the tax thereon upon the appraised value thereof from the legatee or person entitled to such property, and he shall not deliver or be compelled to deliver any specific legacy or property subject to tax to any person until he shall have collected the tax thereon, and whenever any such legacy shall be charged upon or payable out of real estate, the heir or devisee before paying the same shall deduct such tax therefrom and pay the same to the executor, administrator or trustee, and the same shall remain a charge upon such real estate until paid, and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that the said payment of said legacies might be enforced; if, however, such legacy be given in money to any person for a limited period, he shall retain the tax upon the whole amount, but if it be not in money he shall make application to the court having jurisdiction of his accounts to make apportionment if the case requires it of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require.

**5180 SEC. 5. [Same—Sale of property.]** All executors, administrators and trustees shall have full power to sell so much of the property of the decedent as will enable them to pay said tax, in the same manner

as they may be enabled to do by law, for the payment of debts of their testators and intestates and the amount of said tax shall be paid as hereinafter directed.

**5181 SEC. 6. [Same — Payment of tax — Voucher on settlement.]** Every sum of money retained by any executor, administrator or trustee or paid into his hands for any tax on any property, shall be paid by him within thirty days thereafter to the treasurer of the proper county, and the said treasurer or treasurers shall give, and every executor, administrator or trustee shall take a receipt from him of said payments. The words "proper county" shall be taken to mean the county in which the property was situated and subject to taxation at the time of the death of the owner. [Amended 1905, H. R. 90.]

**5182 SEC. 7. [Trust estates.]** Whenever any of the real estate of which any decedent may die seized shall pass to any body corporate or to any person or persons or in trust for them or some of them, it shall be the duty of the executor, administrator or trustee of such decedent to give information thereof, in writing to the treasurer of the county where said real estate is situated within six months after they undertake the execution of their expected duties, or if the facts be not known within that period, then within one month after the same shall have come to their knowledge.

**5183 SEC. 8. [Debts—Refunding tax.]** Whenever debts shall be proved against the estate of the deceased after distribution of legacies from which the inheritance tax had been deducted in compliance with this act, and the legatee is required to refund any portion of the legacy, a proportion of the said tax shall be paid to him by the executor or administrator; if the said tax has not been paid into the County treasury or by the county treasurer if it has been so paid. [Amended 1905, H. R. 90.]

**5184 SEC. 9. [Foreign executor — Transfer of stocks or loans.]** Whenever any foreign executors or administrators shall assign or transfer any stocks or loans in this state standing in the name of the decedent, or in trust for a decedent which shall be liable to the said tax, such tax shall be paid to the treasury or treasurer of the proper county on the transfer thereof; otherwise the corporation making such transfer shall become liable to pay such taxes, provided that such corporation has knowledge before such transfer that said stocks or loans are liable for such taxes.

**5185 SEC. 10. [Erroneous taxes—Refunding.]** When any amount of the said tax shall have been paid erroneously to the county treasurer it shall be lawful for him, on satisfactory proof rendered to him of said erroneous payment, to refund and pay to the executor, administrator or trustee, person or persons who have paid any such tax in error, the amount of such tax so paid provided that all applications for the repayment of the said tax shall be made within two years of the date of said payment. [Amended 1905, H. R. 90.]

**5186 SEC. 11. [Appraisement.]** In order to fix the value of property of persons whose estate shall be subject to the payment of said tax, the county judge, whenever an estate appears to be subject to the tax provided by this act or upon the application of any interested

party, shall appoint some competent person as appraiser as often as, or whenever occasion may require, whose duty it shall be forthwith to give such notice by mail to all persons, and to such persons as the county judge may by order, direct, of the time and place he will appraise such property; and at such time and place to appraise the property at the fair market value, of the same, and for that purpose the appraiser is authorized by leave of the county judge to use subpoenas and to compel the attendance of witnesses before him, and to take the evidence of such witnesses under oath concerning such property, and the value thereof, and he shall make a report thereof and of such value in writing to the county judge, with the depositions of the witnesses and such other facts relating thereto, as the county judge may by order require to be filed with the records of the county court, and from this report the county judge shall forthwith determine and fix the then cash value of all estates, annuities, and life estates for terms of years growing out of said estates, and the tax to which the same is liable, and shall give immediate notice through the mails to all parties known to be interested therein. Any person or persons dissatisfied with the appraisement or assessment, may appeal therefrom to the county court of the proper county within sixty days after the making and filing of such appraisement or assessment, conditioned upon the giving of security to the court to pay all costs, together with all taxes that may be fixed by the court. The said appraisers shall be paid by the county treasurer out of any funds he may have in his hands on account of said tax, on the certificate of the county judge a reasonable fee to be fixed by the county judge together with legal mileage. Witnesses shall be allowed the sum of \$2.00 per day for every day's attendance before the appraisers or county court, together with legal mileage. The officer serving process under this act shall receive the same fees and mileage as is now provided by law for similar services, and the county judge for services performed under this act shall receive the same fees as is now provided by law for similar services. All costs made or incurred under this act shall be paid by the county treasurer out of any funds he may have in his hands on account of said tax, on certificate of the county judge. [Amended Mch. 18, '07; S. F. 21, § 2.]

**5187 SEC. 12. [Appraiser—Malfeasance.]** Any appraiser appointed under the authority and by virtue of this act who shall take any fee or reward from any executor, administrator, trustee, legatee, next of kin, or heir of any decedent, or from any person or corporation liable to pay said tax or any portion thereof, shall be guilty of a misdemeanor, and upon conviction in any court of competent jurisdiction, he shall be fined not less than one hundred dollars nor more than five hundred dollars, and in addition thereto the county judge shall dismiss him from such service.

**5188 SEC. 13. [Jurisdiction over questions.]** The county court in the county in which the real property is situated of a decedent who was not a resident of the state, or in the county of which the deceased was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to all taxes arising under this act, and the county court first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other.

**5189 SEC. 14. [Taxes not paid—Procedure.]** If it shall appear to the county court that any tax accruing under this act has not been paid according to law, it shall issue a summons commanding the persons or corporation liable to pay such tax or interested in such property to appear before the court on a certain day not more than three months after the date of such summons, to show cause why such tax should not be paid. The process, practice and pleadings and the hearing and determination thereof, and the judgment in said court in such cases shall be the same as those now provided or those which may be hereafter provided in probate cases in the county courts of this state and the fees and costs in such cases shall be the same as in probate cases in the county courts of this state.

**5190 SEC. 15. [Same.]** Whenever the treasurer of any county shall have reason to believe that any tax is due and unpaid under this act, after the refusal or neglect of the person interested in the property liable to pay said tax to pay the same, he shall notify the county attorney of the proper county in writing of such refusal to pay said tax, and the county attorney so notified, if he has cause to believe a tax is due and unpaid, shall prosecute the proceeding in the county court in the proper county, as provided in section fourteen of this act, for the enforcement and collection of this tax.

**5191 SEC. 16. [Same—Report.]** The county judge and county clerk of each county shall, every three months, make a statement in writing to the county treasurer of the county, of the party from which or the party from whom they have reason to believe a tax under this act is due and unpaid.

**5192 SEC. 17. [Expenses. Repealed. Laws, 1905, H. R. 90.]**

**5193 SEC. 18. [Records.]** The secretary of state shall furnish to each county judge a book in which he shall enter the returns made by appraisers, the cash value of annuities, life estates and terms of years and other property fixed by him, and the tax assessed thereon and the amounts of any receipts for payments thereof filed with him, which book shall be kept in the office of the county judge as public records.

**5194 SEC. 19. [Funds—Road improvements.]** The county treasurer of each county shall keep all money collected under the provisions of this act in a separate and special fund to be expended under the direction of the county board of each county, for the sole purpose of the permanent improvement of the county roads; such roads shall not be built within the corporate limits of any city or village, but shall begin at the limit of any city or village and extending therefrom, in the direction most traveled by the public; to be determined upon by the said county board. Provided that such improvements may be made from the limit of any city of the metropolitan or first class and through a city of the second class or village where the road so determined upon to be improved is a main road between the country and such city of the metropolitan or first class. All contracts for such permanent improvements shall be let by the said Board, by competitive bids after the plans and specifications therefor drawn by the County Surveyor or engineer have been filed with the County Clerk of each respective county. All bids for the con-

struction of such roads shall be deposited with the County Judge of the respective counties and opened by him in the presence of the County Commissioner and County Clerk, and then filed with the County Clerk. All such permanent road beds shall not be less than twelve feet nor more than 16 feet in width, and shall be constructed of the most durable and approved material, and the remaining part of the said road shall be constructed at one side of the said permanent part, and be used as dirt road; Provided that it shall be lawful for the county commissioners of any county having a population of not more than Thirty Thousand to use said fund in the manner herein provided for the improvement of any grade, bridge, cut, fill, or dirt road leading into any city or village within said county. Provided, that all money heretofore paid by the various county treasurers to the state treasurer, under the provisions of this act shall be, upon proper vouchers signed by the County Judge and County Treasurer, paid back to the said County from which said tax was received, and said money when so refunded by the State Treasurer shall be placed in the special fund heretofore mentioned in each County and shall be expended in like manner and for like purposes as hereinabove specified. [Amended 1905, H. R. 90; Mch. 18, 1907; S. F. 21, § 1.]

**5195 SEC. 20. [Receipts.]** Any person or body corporate shall, upon the payment of fifty cents, be entitled to a receipt from the county treasurer of any county or the copy of the receipt at his option, that may have been given by the treasurer for the payment of any tax under this act, which receipt shall designate on what real property, if any, of which deceased may have died siezed, said tax has been paid and by whom paid, and whether or not it is in full of said tax, and said receipt may be recorded in the clerk's office of said county in which the property may be situated, in the book to be kept by said clerk for such purpose.

**5196 SEC. 21. [Lien.]** The lien of the inheritance tax shall continue until the said tax is settled and satisfied: Provided, that said lien shall be limited to the property chargeable therewith; and Provided Further, that all inheritance taxes shall be sued for within five years after they are due and legally demandable, otherwise they shall be presumed to be paid and cease to be a lien as against any purchaser of real estate.

#### ARTICLE IX.—COLLECTION OF DELINQUENT TAXES.

**5197 SECTION 1. [County treasurer's statement of delinquent taxes.]** It shall be the duty of the County Treasurer of each county, on or before the 15th day of May of each year, to prepare a complete statement of all of the lands and lots in his county on which the taxes for one or more years are delinquent, or on which any special assessment of any city in the county is delinquent. The statement shall describe each parcel of land or town lot, or portion thereof, as the same is described in the county assessment roll for the preceding year, and in cases where city taxes or assessments only are delinquent, then according to the last preceding city assessment roll or to the levy ordinance of the city where such real estate has been charged with the cost of any public improvement. The statement shall be itemized, showing the amount of each

tax and special assessment and the year and purpose for which levied and the several amounts thereof shall be entered in an appropriate column. The date when each special assessment became delinquent shall also be shown. The amount of interest upon each tax and special assessment, reckoned to the first day of the next succeeding October, also the total amount of principal and interest of each tax and assessment, as well as the total of all taxes and assessments, including interest as aforesaid, upon each description of land or lot, shall be entered in appropriate columns. Whenever overlapping descriptions occur it shall be the duty of the County Treasurer to apportion the several taxes and assessments on the different parcels of real estate so that each parcel shall be charged with its proportion according to area. [1903, H. R. 352, § 1.]

SECS. 1-48. "An act entitled 'An Act to Enforce the Payment and Collection of Delinquent Taxes and Special Assessments on Real Property.'" Laws, 1903, H. R. 352. Took effect April 11, 1903. Constitu-

tionality upheld. Object of law stated. *Woodrough v. Douglas Co.*, 71 Neb., 354. Neglect of clerk to prepare statement does not impair lien of taxes. *State v. M. P. Ry. Co.*, 75 Id., 4.

5198 SEC. 2. [City treasurer's statement of delinquent taxes.] It shall be the duty of the treasurer of each city within the state to prepare and furnish the County Treasurer of the county in which such city, or part thereof, is located, on or before the first day of May of each year, a complete list of all lands and city lots within the limits of such city, on which there are unpaid taxes or assessments delinquent on the first day of May of the current year. Such list shall set forth all taxes and special assessments of every nature then delinquent, as shown by the records of such city treasurer and shall be made in substantially the same form and shall contain all that is required in the County Treasurer's statement provided for in section one. The City Treasurer shall apportion the taxes and assessments on overlapping descriptions according to area, in the same manner as is provided for like apportionment by the County Treasurer. Attached to the list shall be a certificate signed by the City Treasurer, to the effect that the list contains a complete itemized statement of all taxes and special assessments remaining unpaid as shown by the records of the office of such City Treasurer and which are delinquent on the first day of May of the current year, and that the same contains a complete list of the lands and lots and parts thereof, within the limits of such city on which such taxes and assessments stand charged, and that the several amounts of principal and interest with which said parcels stand charged, are correctly set forth. [Id., § 2.]

5199 SEC. 3. [Consolidated statements.] The County Treasurer shall, in compiling his complete statement of delinquent taxes and assessments in the county, combine with the statement of the state and county taxes, the list of taxes and assessments furnished by the City Treasurer and shall incorporate the latter statement and list into the complete statement, so that all taxes and assessments of every nature within the county, delinquent on the first day of May of the current year shall be included in the statement provided for in section one,

*Provided*, no tax or assessment shall be included in the statement on which a decree of the District Court has been rendered. [Id., § 3.]

**5200 SEC. 4. [Same—Contents—Form.]** The statement so prepared by the County Treasurer shall be bound in one or more permanent volumes. In addition to the columns above provided for, such statement shall contain additional columns suitably ruled entitled as follows: "Number of Tract." "Name of Owner." "Payments made before sale." "Docket Fee." "Amount decreed against Tract." "Defaulted." "Void in whole or in part." "Special Orders." "Name and address of Purchaser." "Amount paid." "Whole or part Purchased." "Date of Sale." "Redemptions." "Name and address of Assignee." "Premium bid." "Cost of Serving Notice." "Deed issued." "Remarks." There may be added to the statement such other columns and such other matter as may be provided for by order of court, or by the County Treasurer preparing such statement. The County Treasurer's statement may be in the following form: (See form attached.) [Id., § 4.]

**5201 SEC. 5. [Petition—Contents—Form.]** As soon as practicable after the first day of June and prior to the first day of July of each year, the County Treasurer of each county shall prepare a petition addressed to the District Court of such county, entitled, "The State of Nebraska, Plaintiff, vs. The several parcels of land hereinafter described and all persons and corporations having or claiming title to, or any interest, right or claim in, and to, such parcels of real estate or any part thereof, Defendants." Such petition shall allege, in general terms, that the plaintiff as trustee for itself and the counties and cities within the county, is the owner and entitled to enforce the collection, of the various taxes and assessments shown in the statement and list attached to, and made a part of, the petition; that each item of general taxes shown in the statement was duly levied upon the parcel opposite which the same is entered, after an assessment thereof in the manner provided by law; that each special assessment shown in the statement, was levied by the proper municipal authority in the manner provided by law, and that all the requirements of law preceding such levy, were fully complied with by such municipal authority; that the amount of each tax and assessment as shown in the statement is due and unpaid and delinquent, and constitutes a lien upon the parcel of real estate opposite which the same is charged. There shall be a prayer for a decree, or decrees, in favor of plaintiff and against the real estate described in the statement, for the several amounts named therein with penalties and costs of suit, and that the real estate be sold at public vendue as provided by law to satisfy the same. The petition shall be signed by the County Treasurer on behalf of the state of Nebraska and shall be verified by the certificate of the County Treasurer to the effect that the statement of taxes forming a part of such petition, contains a true and accurate statement of all county and state taxes delinquent on such real estate in his county and that the statement of city taxes and assessments is a true and correct exemplification of the certified list of taxes and assessments furnished by the City Treasurer, or Treasurers, within the county. The Certificate shall be signed by the County Treasurer in his official capacity. No other verification of the petition shall be required. The complete state-

ment of all taxes and assessments made by the County Treasurer provided for in Section one shall be annexed to, and form a part of, the petition. The petition shall be in substantially the following form:

In the District Court of ..... County, Nebraska.  
The State of Nebraska, Plaintiff,

vs.

The several parcels of land hereinafter described and all persons and corporations having or claiming title to, or any interest, right or claim in, and to, such parcels of real estate or any part thereof. Defendants.

Petition in Chancery,  
State Tax Suit Year 19.....

For its cause of action the plaintiff alleges and shows to the court that under and by virtue of the laws of the state of Nebraska taxes have been duly levied for State, county and City purposes upon the several parcels of real estate hereinafter described as set forth in the itemized statement which is hereto attached and made a part hereof. Such lands were duly assessed for taxation for each of the years therein named and the amounts set forth in the statement were thereafter duly levied upon, and are legally chargeable against, the several parcels of real estate for the several years as therein set forth. Wherever an assessment for any public improvement is shown in the statement, the amount therein stated was duly levied upon such parcel of real estate by the proper municipal authority and such proceedings were had with respect to such assessment and levy, that all of the requirements of the statute were met and complied with, and the same is a valid and subsisting lien upon such real estate, as described and shown herein. Each item of tax and special assessment shown in the petition is delinquent and has not been paid or discharged, except where an entry to that effect has been made herein. The plaintiff, as trustee for itself and the county of ..... and the city of ..... within such county, is the owner of, and entitled to enforce the collection of, the various taxes and special assessments set forth in this petition and the several amounts shown therein to be unpaid, together with the docket fee, are now due. The plaintiff therefore prays for a decree, or decrees and findings in favor of the plaintiff, that the several taxes and assessments herein set forth may be declared valid and that the several amounts thereof may be decreed and held to be liens upon such real estate, as provided by law, and that upon the establishment of such liens the parcels of real estate herein described, and each of them, which shall remain unredeemed, may be sold at public vendue to satisfy the decree or decrees so entered together with the penalty and costs of this action as provided by law. The State of Nebraska. By..... County Treasurer of ..... County. [Id., § 5.]

Petition prima facie evidence of. State v. Several Parcels, 78 Neb., 591.

**5202 SEC. 6. [Petition—Filing—Docketing.]** On or before the first day of July of each year the County Treasurer of each county shall file with the Clerk of the District Court of the county in which the lands are

located, the petition above provided for, and the cause shall be docketed as a suit in equity. The filing of such petition shall operate as the commencement of a several action against each parcel of real estate shown in the petition, as well as against every party having or claiming any interest, right, title or claim in, or to, such real estate or any part thereof. [Id., § 6.]

**5203 SEC. 7. [Notice—Publication.]** Within ten days after the filing of such petition the County Treasurer shall cause a notice to be published, directed to "All Whom it May Concern" to the effect that the State of Nebraska has filed a petition in the District Court of the County in which the lands are located, praying for a decree against, and the sale of, the parcels of real estate set forth in the list published therewith, for the several amounts named therein and costs of suit; that each person or corporation having an interest in or any right, title or claim in and to such real estate or any part thereof, desiring to contest the enforcement of any tax or assessment set forth in the petition, shall file with the Clerk of the District Court of the county in which the lands are situate, on or before the first day of September of the current year, an answer, setting forth all objections or defenses to such taxes or assessments or the collection thereof; that a decree will be rendered by the District Court in favor of the State of Nebraska and against each parcel of real estate for the full amount claimed in the petition, with docket fee and costs in all cases where answer has not been filed within the time limited. Such notice shall be signed by the County Treasurer and shall be published once a week for four successive weeks in some newspaper of general circulation in the county in which the lands are situated, or, if no newspaper of general circulation shall be published in the county, then in some newspaper of general circulation within the judicial district. There shall likewise be published in connection with such notice a complete list of the lands and lots as shown in the county treasurer's statement of delinquent taxes, and opposite each description the name of the owner as shown by the county assessment roll of the preceding year, as well as a statement of the total amount of taxes and assessments and interest thereon to October first as set forth in the petition to which shall be added a docket fee of one dollar, which amount may be entered in gross against each parcel. The County Commissioners of each county shall designate the newspaper in which said notice, and in which all notices of tax sales made by the County Treasurer hereinafter provided for, shall be published, *provided*, the County Treasurer shall designate such newspaper where the County Commissioners fail to do so. [Id., § 7.]

Premature designation of newspaper by treasurer. *State v. Fink*, 73 Neb., 360. Record of award of printing to a newspaper a "designation." *State v. Cronin*,

75 Id., 738. Printer's fees regulated by sec. 17, ch. 28. *Bee v. Douglas Co.*, 78 Id., 244. Treasurer may designate paper. July 2.

**5204 SEC. 8. [Proof of Publication—Practice—Tax record—Procedure.]** Proof of publication of such notice and statement shall be made by the affidavit of the publisher or financial agent of such newspaper or other person having knowledge of such publication and shall be filed with the clerk of the District Court, on or before the first day of Sep-

tember of the current year. The publisher of each newspaper publishing such notice, shall furnish to the County Treasurer three extra copies of each number of such paper in which such notice shall be published, one of which shall be delivered to the County Clerk, one to the Auditor of State and one shall be retained by the treasurer, and such copies shall be carefully preserved. The affidavit of the publication of such notice shall be prima facie evidence of the facts therein stated in all courts of this state. No final order of court shall be made until such proof of publication has been filed. From the date of the last publication of such notice the cause shall be deemed to be pending against each and every parcel of real estate set forth in the notice and the court shall have complete jurisdiction to hear and determine all matters connected with the taxes and assessments set forth in the petition and the enforcement of the liens thereof upon such real estate and may determine the validity and amount of all such taxes and assessments. The practice of the court, except as herein modified, shall be the usual practice of courts of chancery in this state. The petition, together with the extended columns thereof, providing for various entries and orders of court, shall be termed "Tax Record." The petition shall be deemed and taken to be prima facie evidence of the legality of all the taxes and assessments set forth therein and of the several amounts levied on behalf of the state, county, or city, in which the lands are located, and that such taxes and assessments are unpaid and delinquent. Such petition shall be considered as in evidence, on behalf of the state, without a formal offer. The petition shall be deemed and taken to be a several petition in chancery against each tract and parcel of land described therein, and the decree, or decrees, or orders of the court shall be taken and held to be several decrees and orders against the several tracts of land set forth in the petition, unless such orders show that such was not the intention. The same presumption shall be given to all orders and decrees of the court as to the orders and decrees of a court of chancery, and this shall extend to all entries made by, or under the direction of, the Court upon the tax record. [Id., § 8.]

5205 SEC. 9. [Attorneys.] The state tax suit provided for by this act, shall be prosecuted on behalf of the state by the County Attorney of each County, and where any city taxes or assessments are involved, the city Attorney of any such city may appear and prosecute the suit on behalf of such city; If the County Attorney shall, for any reason, fail to prosecute such suit or be unable to do so, it shall be the duty of the County Commissioners of each county to employ counsel for that purpose and the same may be done without a petition of freeholders of such county. [Id., § 9.]

5206 SEC. 10. [Examination of petition by property owner.] It shall be the duty of all persons and corporations owning or holding the title to, or any interest in, any real estate within the state of Nebraska, on or before the first day of September of each year, to examine the petition of the State of Nebraska of the current year for the enforcement of taxes, to ascertain whether any taxes or assessments stand charged against such real estate in such petition. [Id., § 10.]

5207 SEC. 11. [Payment after filing petition — Default — Decree.]

After the filing of the petition, and at any time prior to the entry of a decree against any parcel of real estate, the owner or any person interested therein, may pay to the County Treasurer the amount of all taxes and assessments delinquent against the property as shown by the petition with interest to the date of payment, together with a docket fee of fifty cents on each parcel of land or lot, and tax receipts shall be issued to the party paying, in the usual form. In all cases where the taxes and assessments set forth in the petition have not been paid on any tract of land or lot, on or before the 15th day of September next following the filing of the petition, and where no answer has been filed within the time hereinbefore limited, or under an order of court, it shall be the duty of any Judge of the District Court in which the suit is pending, to enter a decree in favor of the state of Nebraska and against all the descriptions of real estate standing in default. Such decree shall be for the full amount of taxes and assessments with interest to the first day of October of the current year, as set forth in the petition, together with a docket fee of one dollar for each description, and such decree, as well as all decrees in favor of the state of Nebraska, shall draw interest at the rate of one per cent, per month, or part thereof, from October 1st of the year the petition is filed. If court shall not be in session at the time, it shall be the duty of the Judge of the District Court to render a decree against all real estate in default of answer, sitting at Chambers in the County. The decree against defaulted lands may refer to the tax record for both the description of real estate and the amount of the lien on each parcel of land, or city lot, and shall be sufficient if it so refers to the tax record, giving the numbers of the several tracks [tracts] of land so defaulted, as they appear on the tax record, and may contain such other general findings and orders as the court may direct. Such decree may be in the following form:

"The said petition and the matters therein stated came on to be heard and proof of publication of notice of hearing such petition having been made and filed, it is therefore considered, adjudged and decreed that each parcel of land shown and described in the tax record of the State tax suit for the year 19. . . . against which the entry "defaulted" appears, is in default of an answer; that the taxes and assessments set forth in said tax record opposite the parcels of real estate, so marked defaulted, are valid lien against the same and that the several amounts charged in the Tax Record in the column headed "Amount Decreed Against Tract" are justly due and chargeable against said parcels respectively. The following numbered parcels or parts thereof as shown in said tax record are in default and decree is hereby rendered against the same, towit: numbers. It is further considered, adjudged and decreed that said several parcels of real estate, or such interest therein as may be necessary to satisfy the amount herein decreed against the same, shall be severally sold as the law directs and that the entries of default upon said tax record as well as all other parts of said tax record referring to the above numbered parcels of real estate shall stand as a part of this decree and have the same effect as if entered herein.

..... Judge of the District Court. [Id., § 11.]

shall be the duty of the County Treasurer of each County before defaults are entered in any state tax suit, to certify to the Clerk of the District Court all payments of taxes and assessments made since the compilation of the delinquent list, and such payments shall be entered in the tax record by the Clerk of the District Court. Immediately after the first of September of each year it shall be the duty of the Clerk of the District Court to enter default by writing or stamping the word "defaulted" in the tax record in the column marked "defaulted", against each parcel of land or city lot or part thereof on which the taxes and assessments shown in the petition, have not been fully paid and on behalf of which no answer has been filed. When the decree of the court has been entered against the lands and lots in default, the tax record together with a certified copy of the default decree, shall be turned over to the County Treasurer and shall remain in said office except when needed in the office of the Clerk of the District Court; but said record shall always be subject to the order of any Judge of the District Court. The County Commissioners of any county may, if deemed advisable, have a duplicate tax record prepared and kept by the County Treasurer. Where such a record is kept the entries therein shall be made to correspond with the entries in the original tax record and such duplicate shall be evidence of equal credibility with the original. For the purpose of making entries in the tax record and receiving and disbursing monies under the provisions of this act, or under an order of court, and for the purpose of making sales, executing deeds, as well as performing such other duties as may be enjoined upon him by the provisions of this act, the County Treasurer is hereby made, *ex officio*, an officer of the district court. It shall be the duty of the County Treasurer to make entries from time to time in the tax record, in suitable columns, showing all taxes and assessments paid, also all sales of real estate made by him under decree of the court; the name and address of the purchaser; the assignment or assignments of all certificates of tax sale: the redemption of any real estate from the decree of the Court or from any tax sale; the issuance of any deed and the date thereof. He may also record on the tax record other official acts, not named herein, in so far as the same relate to his duties under the provisions of this act. Such entries shall be deemed and taken to be the official statements and reports to the court of the various acts of said County Treasurer, and said tax record, or duly certified copies hereof shall be *prima facie* evidence of the due performance of all official acts as therein recorded. The County Treasurer shall receive the sum of fifty cents for each certificate of tax sale issued by him, also twenty-five cents for each redemption certificate and one dollar for each tax deed issued by him, and no other fee for performing the duties required of him under this act. The fee for issuing certificates of tax sale shall be added to the amount of every tax sale and the same shall be added to and become a part of the costs. The fees of the Clerk of the District Court for the services herein provided for, except such as shall be rendered at the instance of parties contesting the suit, shall be fifteen cents for each parcel of real estate on which decree shall finally be entered, and no other fees shall be allowed for such services. [Id., § 12.]

5209 SEC. 13. [Answer—Deposit—Costs.] All objections to the taxes, or assessments, or to a decree in favor of the State of Nebraska against any parcel of real estate shall be made by answer, signed and verified by the party making the objections. Such answer shall state what interest the answering defendant has in the real estate in controversy and shall give a complete description of the parcel, or parcels, of real estate on behalf of which objection is made, also a complete statement of the item of taxes and assessments against such real estate as shown in the petition, and each parcel shall be numbered in the answer to correspond with the number given to it in the petition. The facts upon which the objecting party relies to defeat the action, or to prevent a decree in favor of the State of Nebraska, shall be set forth in concise language. At the time of filing such answer, the party filing the same shall pay to the clerk of the district court Two Dollars (\$2.00) on account of each parcel of land for which answer is made, which amount shall be held by the clerk as a deposit to cover any costs made by, or on behalf of, such tract, and may be applied by the clerk to any costs taxed to such tract, or to the person answering on behalf thereof and the balance shall be refunded to the party contesting. In case the answering party shall be successful in defeating the collection of taxes contested, he shall be awarded judgment against the plaintiff for the costs occasioned by such contest. When the answering defendant succeeds in defeating a portion only, of the taxes contested, the costs of such contest shall be apportioned by the court between the parties. On appeal the successful party shall be entitled to the costs of such contest, in both courts, unless for special reasons the court shall apportion the costs as above provided. Costs adjudged against the plaintiff shall be paid out of the county general fund under an order by the county commissioners, or county supervisors. All costs against the plaintiff occasioned by the successful contest of any city, or village taxes, or assessments, shall be repaid to the county by such city or village. The docket fee mentioned in Section 11 of this act shall be treated as costs, and when the same has been collected by the treasurer on any tract of land, fifteen cents from each docket fee shall be paid to the clerk of the district court in full for his services provided for in Section 12, and the county treasurer shall also pay to each city in the county, the sum of twenty-five cents from the docket fee on each tract of land in such city. Where an answer has been filed and the decree of the court shall run in favor of the plaintiff for any amount against a tract of land, the court may, in its discretion, adjudge the costs either against the tract, or against the party answering. In either case, the costs shall be taxed as follows: The docket fee of One Dollar against each tract as provided in Section 11 of this act, also the sum of twenty cents for each notice required to be published by this act. [Id., § 13, as amended 1905, S. F. 271.]

5210 SEC. 14. [Trial—Appeal—Transcript.] The State Tax suit shall stand for hearing on all answers on the first Monday of October in each year, and shall be triable from day to day, without formal postponement, until all of the issues are disposed of. If court is not in session in the county on the first Monday in October, then the cause shall be triable at the opening of the next regular or adjourned term, of said court. It shall have precedence over all pending civil cases and shall

be tried and disposed of expeditiously. The objections stated in the answer shall be considered as denied without a reply, but any new matter may be pleaded by the state in a reply. The court may, of its own motion, or on motion of either party, consolidate all cases and defenses in which the answers present identical issues, *provided*, cases shall not be consolidated where objection is made by either party. In all contested cases the hearing shall be in open court and oral evidence may be taken, but the same need not be preserved unless requested by a party to the suit, in which event it shall be taken and preserved by the court reporter. If either party desires to appeal from the decree, a transcript shall be prepared by the clerk, including that portion of the petition and tax record affecting the property involved in the contest, and all other parts of the tax record may be omitted. [Id., § 14.]

**5211 SEC. 15. [Tax, when declared void.]** No state, county or city general, tax shall be declared void, in whole, or in part, except upon a showing that the property in controversy was exempt from taxation, or that the levy was for an illegal or unauthorized purpose, or that the tax was based upon fraud, gross injustice, or mistake. The failure on the part of any officer or officers charged with the duty of assessing, listing or levying such tax or taxes upon any real estate or to perform any of their duties with respect thereto, shall not be ground for setting aside any tax charged against any real estate in such petition. In every case where the court shall find that any tax, or special assessment, or any part thereof is void, an entry of the word "Void" shall be made on the tax record by, or under the direction of, the court, attested by the name or initials of the judge making the finding. The word "void" wherever written opposite a tract, or part thereof, under the column headed "Void in the whole or in Part", shall be deemed a sufficient entry. Every tax and assessment, or part thereof, not marked "void" as aforesaid, shall be taken and held, in all proceedings, to be regular and valid. [Id., § 15.]

Tax levied under unconstitutional statute is for "an unauthorized purpose." *State v. Several Parcels*, 78 Neb., 703.

**5212 SEC. 16. [Appeal—Procedure—Stay of execution.]** In all contested cases the state, or any party contesting on behalf of any real estate, may appeal to the Supreme Court from the decree of the District Court. The appeal of any defendant shall not stay the execution of the decree, nor affect any sale thereunder, unless the party appealing shall, within twenty days from the entry of the decree, pay to the County Treasurer the amount of all state, county and city general taxes with interest and costs against the same as adjudged in the decree and shall, in addition, give a good and sufficient bond with two sureties to be approved by the Clerk of the Court, running to the State of Nebraska, conditioned upon paying the costs of such appeal in case the decree of the District Court shall be affirmed in whole or in part. If the decree shall be affirmed, the County Treasurer shall apportion the amount paid to the various funds entitled thereto. In case the decree shall be reversed, the County Treasurer shall refund the amount paid to the party appealing. The state may appeal from any decree without giving bond. Upon

appeal to the Supreme Court the cause shall stand for hearing thirty days after the filing of the transcript, or at the first session of the court thereafter. The appellant shall serve and file his briefs at the time of the filing of the transcript and answer briefs shall be filed within twenty days thereafter. Appeals taken under this chapter shall take precedence in the Supreme Court over all civil cases. Where any party shall appeal for the purpose of delay only, and the Court shall so find, a penalty of twenty-five dollars shall be assessed against the party so appealing, which may be recovered in the name of the State of Nebraska before any competent tribunal. [Id., § 16.]

5213 SEC. 17. [Enforcement of decree—Notice of sale.] Contested cases shall not delay the enforcement of the decrees of the court taken by default, or the decrees from which no appeal has been taken. The County Treasurer of each county shall execute all decrees of the court and shall be under the direction and control of the court. It shall be the duty of the County Treasurer of each county, in the month of October of each year to cause a notice to be published once a week for three consecutive weeks, in some newspaper published and of general circulation in the county, or if no newspaper is published in the county, then in some newspaper of general circulation in the judicial district, which notice shall contain a list of all of the lands and lots against which decrees have been entered by default, as well as a list of all lands and lots on which decrees have previously been rendered, and no sale made or sale set aside. Such notice shall state that the County Treasurer will offer for sale each of the parcels of real estate described in the list, at public auction to the highest bidder for cash at the County Treasurer's office, beginning at nine o'clock A. M. of the first Wednesday in November of said year and that the sale will continue from day to day until every parcel of real estate has been sold or offered twice. Such notice shall also contain an announcement that the County Treasurer will sell to the highest bidder for cash, all certificates of tax sale issued to the state, county or any municipality under the provisions of this Act, and undisposed of, but such certificates need not be otherwise described. Such notice may be substantially in the following form:

**"TAX JUDGMENT SALE."**

Pursuant to decrees of the District Court of ..... County, Nebraska, duly entered in the state tax suit for the year 19...., or former years, in proceedings on behalf of the state of Nebraska to enforce the payment of delinquent taxes and assessments upon real estate by the State of Nebraska and in pursuance of the statute in such cases made and provided, I shall, on Wednesday, the .... day of November, 19.... at nine o'clock in the forenoon, at the office of the County Treasurer, in the town (or city) of ..... and county of ....., offer for sale to the highest bidder for cash the lands and lots on which decrees of said court have been entered, as shown in the list published herewith, to satisfy the amount of such decrees with interest, penalties and costs. Such sale will be continued from day to day from nine o'clock A. M. to five o'clock P. M. until all of the lands therein described have been sold or offered twice. I shall also offer for sale at the same time and place all certificates of tax sale of the state of Nebraska and

the county of..... and the city of.....acquired under state tax suits which are undisposed of at the time of said sale.

.....  
Treasurer of.....County.

With the notice shall be published a tabulated list of lands and lots, showing each description on which decree has been entered as aforesaid, and opposite the same the total amount of the decree, interest to the first day of October of the current year, penalty and costs. [Id., § 17.]

**5214 SEC. 18. [Notice of sale—Proof of publication.]** The notice of every sale for taxes shall be published in a newspaper, or its supplement, if a supplement is necessary. Abbreviations in notices shall not vitiate them, providing the same do not actually mislead. The printer, publisher or financial officer or agent of the newspaper publishing such list, shall transfer by mail or other safe conveyance to the County Treasurer four copies of each number of the paper containing said list and notice, to one of which copies he shall attach his certificate, under oath, of the due publication of the list and notice for the time required by law, which said copy shall be presented, with the affidavit attached, by the County Treasurer, to the Clerk of the District Court, and said copy shall be filed and preserved as a part of the records of said court. Such affidavit shall be prima facie evidence of the facts therein stated. It shall be the duty of the County Treasurer to file one copy of each number of said paper in his office and deliver one copy to the County Clerk and one copy to the Auditor of State, which said copies shall be carefully preserved. In all cases where there is an error in the advertised list, or notice, or in any publication called for by this act, the fault thereof being the printer's, the printer shall lose the compensation allowed for such erroneous tracts or lots, or the entire list, as the case may be. All publications made on behalf of the plaintiff under the provisions of this act shall be paid for by the County Treasurer, under warrant drawn by order of the County Commissioners on the County general fund. [Id., § 18.]

**5215 SEC. 19. [Highest bidder.]** At every sale by the County Treasurer under this act, the highest bidder shall be deemed to be the person who offers to pay in cash the amount of the decree, interest, penalty and costs due on any parcel of land, or lot, at the date of the sale, or the smallest portion of the same, and when a portion is so designated, it shall in all cases be considered to be an undivided portion, provided, the entire interest in any tract may be sold where the amount due against the same is not bid on a smaller portion, and provided further, that where the decree upon any parcel of real estate includes either state, county or city taxes for four or more years, the tract or lot may be sold to the highest bidder regardless of the amount of the decree and without appraisalment of the property sold. [Id., § 19.]

**5216 SEC. 20. [Sale—Purchase by state, county, or city.]** The County Treasurer shall offer for sale to the highest bidder for cash, all of the descriptions of real estate and certificates of tax sale, in accordance with the published notice and after all have been offered once,

shall immediately re-offer such tracts as have not been sold, and the County Treasurer shall purchase in the name of the State of Nebraska for an amount not to exceed the decree, interest, penalty and costs, on such second offer, all tracts of land for which there are no other bids and whereon the decree covers no city taxes or assessments, and not more than three years of state and county taxes. Each county or city whose taxes or assessments are included in the decree upon any parcel of real estate, may bid thereon at any sale made by the County Treasurer, but such bid shall be only upon the entire interest covered by the decree and shall be for an amount not exceeding the amount of the decree, interest, penalty and costs. [Id., § 20.]

**5217 SEC. 21. [Sale—Application of proceeds—Defaulting bidder.]**

The state, city or county purchasing at any sale of real estate under this Act, shall hold the certificate of sale as trustee for itself and all other political sub-divisions in whose favor the decree was rendered, and no money need be paid or deposited with the treasurer on such sales. All lands sold to the state, county, or city, shall be regularly taxed and assessed thereafter until the sale has been finally confirmed in the state, county, or city, as the case may be. Whenever the full amount of any decree of the District Court against any tract of land shall not be realized, by a sale thereof, the proceeds of such sale shall be applied and prorated as follows: First: They shall be applied to the payment of the costs. Second. To the payment of the state, county, and city general taxes included in the decree and if the proceeds are more than sufficient to pay such taxes the residue shall be applied to the payment of any special assessment or assessments. If the proceeds are insufficient to pay the costs and the regular state, county and city general taxes, the same shall be prorated among the various funds for which levies have been made by the state, county and city respectively in the proportion shown in the petition or fixed by the decree. It shall be the duty of each purchaser to pay to the County Treasurer, forthwith, the amount of his bid in current funds receivable for taxes. If any bid shall not be made good within twenty-four hours after the sale, the property sold shall immediately be re-offered for sale and if not sold for an equal amount the bidder shall be liable to the county in double the amount of his bid to be recovered in an action before any court of competent jurisdiction. [Id., § 21.]

**5218 SEC. 22. [Certificate of sale.]** The County Treasurer shall execute and deliver to the purchaser of each parcel or lot of land, a certificate, which may be substantially in the following form:

Certificate of Tax Sale. Tax Suit, Year 19.... Tract No.....  
 State of Nebraska, }  
 County of ..... } ss.

I, ..... Treasurer of the County of ..... state of Nebraska, do hereby certify that a public sale of real estate made pursuant to a decree entered by the District Court of said county in the tax suit of the State of Nebraska for the year 19... to enforce the payment of taxes delinquent upon real estate in said county the following described real estate situate in said county and state, to-wit: (insert description) was duly sold by me in the manner provided by law at

public vendue on the.....day of.....19.. to.....for the sum of.....Dollars, he being the highest and best bidder for the same. Unless redemption of said real estate shall be made within the time and in the manner provided by law the holder of this certificate will be entitled to a treasurer's deed upon surrender of this certificate and upon confirmation of sale by said court.

Witness my hand this....day of....., 19.. .....  
\$. .... Treasurer of.....County.

More than one parcel of real estate may be included in a single certificate, at the option of the purchaser. Whenever the treasurer shall sell any parcel for less than the total amount of the decree, interest, penalty and costs, there shall be inserted in the certificate of sale, notice to the holder that the treasurer is authorized to receive a premium on such sale at any time within eighteen months from the date of sale, and that the holder of such certificate is required to examine the records of the County Treasurer's office at the end of such period of eighteen months to ascertain whether or not a premium has been offered thereon. All certificates of tax sale shall be assignable by endorsement, but such assignment shall not be notice to affect parties dealing with the property until the name and address of the assignee is recorded upon the tax record by the County Treasurer. [Id., § 22.]

**5219 SEC. 23. [Sale less than decree—Premium bidder.]** Whenever the County Treasurer has made a sale of any real estate for less than the amount of the decree, interest, penalty and costs thereon under the provisions of this act, the sale shall be held to have been made upon the following conditions: Any person may, within eighteen months from the date of such sale, file with the County Treasurer an offer, in writing, to pay the amount of such sale with eighteen per cent interest thereon and an amount in addition, which shall not be less than ten per cent of the original purchase price, and which shall be known as a "premium". At the end of the period of eighteen months it shall be the duty of the owner of such certificate of tax sale to examine the records of the County Treasurer for premium bids and in case the holder of such certificate desires to increase the premium offered, he may do so within five days after the expiration of said period by paying to the County Treasurer a premium, which shall equal the highest premium offered on said tract and in addition an amount not less than five per cent of the original purchase price. If the holder of such certificate shall not pay to the treasurer an additional premium within the time above provided, it shall be the duty of the County Treasurer to issue a new certificate of tax sale, bearing the same date as the original certificate, to the person offering the largest premium on such sale. The person whose premium is accepted shall immediately pay to the County Treasurer the full amount of his offer and the Treasurer shall hold the amount of the original sale with eighteen per cent interest thereon for the benefit of the holder of the first certificate and the premium shall be credited to the various taxes and funds as provided in section twenty-one. The offer of any premium on any sale shall be deemed to relate back to the date of sale, but upon redemption the holder of the second certificate shall be

entitled to interest only upon the amount actually paid by him at the rate of one per cent per month from the date of payment, which shall be noted on his certificate and upon the tax record. The Treasurer shall enter the name and address of the new bidder and the amount of the new bid on the tax record and the holder of the new certificate shall proceed to serve notice upon the owner and occupants in all respects as though the certificate had been issued to him on the date of the tax sale. [Id., § 23.]

**5220 SEC. 24. [Treasurer—Entries on tax list.—Report.]** The Treasurer shall mark his tax lists, as the sales are completed, with the word and figures: "Decree 19. . . ." (the year in which the petition was filed). Each tax list shall be so marked opposite each item of taxes included in the decree and the city tax lists certified by the city treasurer to the County Treasurer shall be likewise marked. The county Treasurer shall receive all city taxes and assessments included in the annual delinquent list of the City Treasurer from and after the first day of May of each year and shall make a report to each city treasurer on the first day of each succeeding month, of all amounts collected for such city. [Id., § 24.]

**5221 SEC. 25. [Certificates — Subsequent taxes.]** If any parcel of real estate, sold under the provisions of this act shall be offered at the same sale as state, county or city tax certificates, the purchaser must also at the same time become the purchaser of the certificates of tax sale held by the state, or such county, or city, upon such real estate as the case may be. All sales made in the contravention of this requirement shall be void. It shall be the duty of the holder of each certificate of tax sale issued by the County Treasurer (other than the state, county, or city) to pay subsequent taxes and assessments levied upon the property purchased after the same become delinquent. Such payment shall be made in the usual manner, and tax receipts shall be issued to the person paying, as holder of tax title, and the amount of such payments shall be added to the sale and no redemption shall be permitted from such sale without including such subsequent tax so paid, with interest at the rate of one per cent per month from the date of payment. [Id., § 25.]

**5222 SEC. 26. [Assignment of certificate by state, county or city.]** Any person desiring to purchase any certificate of tax sale owned by the state or by any county or city, either at public or private sale, may secure an assignment thereof by paying to the County Treasurer the amount due thereon, as well as all subsequent taxes and assessments on the property then delinquent, *provided*, a premium sale may be purchased at public sale for less than the amount of the decree and such sale shall be subject to the provisions of section twenty-three. Such assignment shall be made by endorsement of the County Treasurer in his official capacity, countersigned by the County Clerk. A record shall be kept of such assignments by the County Treasurer and the County Clerk. The effect of such assignment shall be to vest in the assignee the same rights which would have been secured to such assignee had he been the original purchaser at the sale. [Id., § 26.]

Does not authorize sale for less than amount due. Amount due, how determined. *State v. Fink*, 74 Neb., 641.

**5223 SEC. 27. [Redemption.]** Any person, or corporation, having an interest in any real estate against which a decree has been entered shall have the right to redeem from such decree by paying to the County Treasurer the amount of such decree with interest from the first day of October of the year in which the petition was filed at the rate of one per cent per month and any penalty or costs which have been adjudged against the parcel redeemed. A period of two years from the date of sale shall be allowed for redemption from every sale under a decree which includes four or more years of state, county or city taxes and a period of three years shall be allowed for redemption from the date of all sales under all other decrees provided for in this Act. After sale, redemption may be made upon the following terms and conditions. If any tract shall be redeemed within six months from the date of sale the party redeeming shall pay the amount of such sale with six per cent interest thereon; after six months, the amount of such sale with interest from date of sale at the rate of one per cent per month or fraction thereof, together with all taxes and assessments paid subsequent to the sale with interest at the same rate from date of payment. During the last six months of the period of redemption, in addition to the amount above provided for, every redemption shall include the amount expended by the purchaser in the service, or publication, of the notice to the owners and occupants of real estate under the provision of Section Thirty-three, *provided*, no redemption from premium sales shall be allowed for less than the amount of the decree, interest and costs and subsequent taxes paid. Redemption may be made at any time before final confirmation of sale by the court, by the payment of all of the amounts above provided for as well as any additional expenses and costs, the amount of which may be determined by the court. Infants, idiots and insane persons may redeem any land belonging to them from a sale made by the County Treasurer, within two years after the expiration of such disability, on the same terms and at the same rate of interest above provided reckoning interest to the date of redemption. Any redemption shall inure to the benefit of any person having the legal or equitable title to the property redeemed. [Id., § 27.]

**5224 SEC. 28. [Same by part owner.]** Any person having an undivided interest in any tract of land sold by the County Treasurer, may redeem his interest by paying the proportionate amount required for redemption of the whole, and any person having any interest in a divided portion of any tract of land described in the petition, may, by a proper order of court, pay the taxes and assessments on, or redeem from a sale on, such divided portion and the amount fixed by the court shall be deemed final and a justification to the Treasurer for receiving the amount or amounts so adjudged. [Id., § 28.]

**5225 SEC. 29. [Cancellation of certificate by owner.]** Whenever the owner or holder of any certificate of tax sale shall return the certificate to the County Treasurer and request a cancellation of such certificate, the same shall be taken up by the County Treasurer and preserved and an entry shall be made upon the tax record that the certificate has been returned and cancelled and such cancellation shall have the effect

of a redemption from such tax sale, *provided*, no cancellation of premium sale certificates shall be made until the premium period shall have expired. [Id., § 29.]

**5226 SEC. 30. [Redemption certificate — Money.]** Whenever redemption has been made of any real estate as provided in this act, it shall be the duty of the County Treasurer to issue a redemption certificate to the party redeeming and to mail a notice to the person owning the certificate of tax sale, as shown by the records of his office. Redemption money in the hands of the Treasurer shall be held subject to the order of the person owning the certificate of tax sale upon the property redeemed. [Id., § 30.]

**5227 SEC. 31. [Judgment record—Tax record—Decree.]** The Clerk of the District Court shall keep a judgment record for the state tax suit of each year, which judgment record may as far as practicable, be composed of printed forms, in which record the judgments and decrees of the court may be entered. It shall be the duty of the Clerk of the District Court to prepare a certified copy of each final decree as the same is entered of record and deliver such copy to the County Treasurer. Such certified copy, or copies, may be composed in part of printed forms and may be bound in a volume and one certificate of the clerk may cover, broadly, all the copies of decrees within such volume. The copies of such decrees, so certified, shall be annexed to the tax record and shall be and become a part thereof, and it shall be the duty of the County Treasurer to enter upon the tax record the amount of any such decree, or decrees so rendered, subsequent to the default decree provided for in section eleven. If from any cause no decree shall be entered against any real estate described in the petition for the taxes therein named, or any part thereof, such taxes shall be added to the petition in the state tax suit for the year next succeeding. [Id., § 31.]

**5228 SEC. 32. [Sales, when, where and how held.]** The County Treasurer of each county shall hold at least two sales each year to satisfy decrees of the District Court. The default sale shall be commenced on the first Wednesday in November of each year and a second sale shall be held commencing on the first Monday of May of each year. There may also be held, if the County Treasurer so elects, quarterly sales commencing on the first Monday in February and the first Monday in August, respectively of each year. All Treasurers sales shall be held in the office of the County Treasurer and it shall be the duty of the Treasurer, at each of the sales held by him, to offer for sale all of the lands and lots on which decrees have been previously entered and not appealed from, and where the lands have not been previously sold or sales set aside; and he shall also offer at the November and May sales all tax certificates of the state, county or city which have not been redeemed or disposed of. In making the additional sales provided for in this section, the County Treasurer shall advertise the same in the month preceding the sale and shall follow substantially the directions herein given for the annual sale in November. [Id., § 32.]

**5229 SEC. 33. [Final notice.]** It shall be the duty of the holder of every tax certificate (other than the state, county or city) to cause a notice, which shall be termed "Final Notice" to be served upon the owner, as well as every person in actual occupancy of the lands or lots

purchased, not less than three months nor more than six months from the expiration of the period of redemption. Such final notice shall be in the nature of process issuing out of the court having jurisdiction over the action wherein the decree was rendered. It shall be the duty of the sheriff of such county, whenever a certificate of tax sale is presented to him on which not more than six nor less than three months remain of the period of redemption, to issue a final notice to the owner and occupants of the real estate described in such certificate, which notice shall be entitled in the cause and shall notify the persons therein named and the occupants of the land, that such land was sold on a day named, under a decree of court and that the time of redemption from such sale will expire on a certain day therein named. Such notice shall contain a description of the real estate sold and shall also direct the person served to examine the Confirmation Record of the court for notice of the time when, and the place where, the hearing on confirmation of sale will be had. Such final notice shall be signed by the sheriff, or deputy, and shall be served forthwith in the same manner as a summons in a civil action in the District Court, *provided*, that in all cases the person, or persons, in actual occupancy of the real estate, also those persons who are designated in any other way than by their Christian and surnames shall be served personally. If the true and full name of the owner or occupant is not known, it shall be sufficient to designate such person by any name or description; or he may be designated as "unknown". When persons are served as "unknown" the sheriff in his return shall state the name of the person upon whom service was made. When the party to be served is not a resident of, or cannot be found with reasonable diligence in the county in which the land is situate, it shall be the duty of the sheriff of such county, upon the request of the holder of any certificate of tax sale, to depute in writing on the back of the final notice, the sheriff of any other county, or counties, to serve such notice. It shall be the duty of each sheriff so deputed, upon receipt of such notice, upon payment of his fees, to make service thereof in the same manner as provided for service of final notice in the county in which the lands are situate. Sheriffs shall receive the same fees for serving final notice as are now provided for service and return of summons; and the sheriff may require payment of his fees in advance. As soon as service has been made it shall be the duty of the sheriff making the service to return the same forthwith to the Clerk of the District Court wherein such action was tried, and the clerk shall record the same in a book to be kept for that purpose, which book shall be indexed according to the numbers of the tracts of land set forth in the petition. Such final notice may be in the following form:

"In the District Court of ..... County, Nebraska.

The State of Nebraska, Plaintiff,

vs.

The several parcels of land hereinafter described  
and all persons and corporations having or  
claiming title to or any interest, right or claim  
in or to such parcels of real estate or any part  
thereof, Defendants.

Final Notice.  
Tract No....

To..... and to the occupants of the Real Estate described below, whose names are.....(if unknown say "unknown"):  
Notice is hereby given that under a decree of the District Court of said county rendered in the State Tax suit for the year 19.., the following described real estate situate in the County of.....and State of Nebraska, to-wit: (insert description) was on the ....day of..... 19....., duly sold at public vendue by the County Treasurer of said county in the manner provided by law and the period of redemption from such sale will expire on the .... day of ..... 19... You are further notified that the owner of the certificate of tax sale issued by the Treasurer will make application to the court in the above entitled cause for confirmation of such sale as soon as practicable after the period of redemption has expired, and you are hereby notified that the time and place of the hearing upon such confirmation will be entered in the Confirmation Record kept by the Clerk of said court, on or before the .... day of ....., 19... You will examine said Confirmation Record to ascertain the time of such hearing and may be present, if you desire, to make any objections or show cause why the sale should not be confirmed. ...., Sheriff of ..... County. [Id., § 33.]

Separate notices to redeem should be given. *Ambler v. Patterson*, 80 Neb., 570, 575.

5230 SEC. 34. [Same—Publication.] Where the owner of any real estate is a non-resident of the state or cannot, with reasonable diligence, be found therein, or in cases where the name, or names of such owner, or owners, cannot be ascertained by the exercise of reasonable diligence, it shall be sufficient for the owner or holder of any certificate of tax sale to cause service of Final Notice to be made upon the person actually occupying such real estate, in the manner above provided, and to cause a notice substantially like the sheriff's Final Notice, signed by such owner, his agent, or attorney, to be published once a week for three consecutive weeks in some newspaper of general circulation in the county where the land is located, or if no newspaper be published in the county, then in some newspaper published in the judicial district. The service shall be deemed complete on the date of the last publication. Prior to the giving of such notice it shall be the duty of the purchaser, his agent, or attorney, to make and file, in the office of the Clerk of the District Court, an affidavit stating that the person asking for such service is the owner and holder of the certificate of tax sale, giving the date of sale and the number of the tract, according to the number given it in the petition; also the description of the real estate sold, with the further statement that the parties therein named on whom it is desired to make service by publication, are non-residents of the state, or cannot be found within the state, upon the exercise of reasonable diligence, or that the names of such owners are unknown. It shall be sufficient to designate the persons to be served by publication, in the same manner as in the sheriff's Final Notice. The Clerk of the District Court shall file and preserve such affidavit with other papers and documents in the case. [Id., § 34.]

5231 SEC. 35. [Same, cost—Expense.] It shall be the duty of the holder of any certificate of tax sale, upon the expenditure of any amount

under the provisions of the two preceding sections, to file a statement thereof with the County Treasurer and the party redeeming after the filing of such statement, shall be required to pay to the Treasurer for the use of the owner of such tax certificate the amount so expended, *provided*, the charge for the publication of any notice shall not exceed Two Dollars for each tract of land or lot included in the publication. [Id., § 35.]

**5232 SEC. 36. [Notice—Failure to serve.]** If the holder of any certificate of tax sale shall fail to serve final notice as provided in this act, the period of redemption on such tax sale shall be extended for a period of one year, during which period the amount paid at the tax sale and subsequent taxes shall draw interest at the rate of one per cent per month and such holder shall be entitled to make service of final notice within the first three months of the last six months of the period of redemption so extended. The person redeeming, however, shall not be required to pay any costs expended in any attempt to serve notice at the end of the first period of redemption. [Id., § 36.]

**5233 SEC. 37. [Confirmation record — Notice.]** The Clerk of the District Court shall keep a record which shall be known as "Confirmation Record." Such record may be in substantially the following form:

State Tax Suit of the Year 19...

In the Matter of the Confirmation of sale }  
upon tract numbered ..... }

To the Owners and Occupants of the Real Estate described below, and to Whom it may Concern: You are hereby notified that the undersigned is the owner and holder of ..... certificate of tax sale issued by the County Treasurer of ..... County under and by virtue of a decree of the District Court of said county in the state tax suit of the year 19... upon the following described real estate situate in said county and state, to-wit: (Here insert description and number of tract), and that I will, on the .... day of ....., 19..., at .... o'clock ..M. of said day, in the District Court room (or before Hon. .... sitting at Chambers) in the city of ..... call up the matter of the confirmation of said Treasurer's sale, and unless objections are made to such confirmation, such sale will be confirmed and deed issued as provided by law. ...., Purchaser. [Id., § 37.]

**5234 SEC. 38. [Confirmation—Entries in record—Decree.]** It shall be the duty of the holder of each certificate of tax sale (or other than the state, county, or city), on or before the last day of the redemption period, either by himself or by his agent or attorney, to enter in said Confirmation Record the date of such decree as well as the number of the tract covered by his certificate of tax sale, together with a description of the real estate on which confirmation is sought and the time when and the place where a hearing will be had upon such confirmation. The entry of notice in such Confirmation Record shall be deemed equivalent to personal service upon all persons served with Final Notice. The order of confirmation may be entered by a Judge of the District Court sitting at Chambers. The court shall examine the record of the proceedings and if such proceedings are found to be regular and the notice of the expiration of the time of redemption has been duly

served and notice given of the hearing on confirmation, and if it shall appear that the person applying for confirmation is entitled to a deed to the property, an order of confirmation shall be entered directing the treasurer of the county to execute and deliver to the owner of the certificate a deed of the real estate sold in due form of law. Any person having an interest in the real estate upon which a sale is about to be confirmed may, at any time prior to confirmation, file with the Clerk of the District Court his objections thereto in writing, and shall at the same time enter notice thereof in the Confirmation Record. The party so objecting shall state the nature of his interest in the property and shall describe such property by reference to the petition number of the tract, and shall also state in concise language the facts on which he bases his objections. [Id., § 38.]

**5235 SEC. 39. [Objections to sale.]** Confirmation of sale shall not be withheld, nor shall the sale be set aside except on one or more of the following grounds: First: That the court was without jurisdiction to enter the decree. Second: That the taxes or assessments on which the decree was based had been paid prior to the decree, or sale. Third: That redemption had been made from the decree or treasurers sale thereunder. Fourth: That the land was not subject to taxation or to special assessment. Fifth: That the taxes and assessments, or a part thereof, were based upon proceedings wherein there had been fraud, gross injustice or mistake. [Id., § 39.]

Scope of action stated. "Gross injustice" construed. *State v. Several Parcels*, 78 Neb., 225. S. C. May 21, '08.

**5236 SEC. 40. [Appeal from confirmation.]** Any person claiming an interest in the land, who shall desire to appeal from a confirmation of sale, shall be permitted to do so upon complying with the following conditions: The full amount of the decree, interest, costs and expenses of every nature, up to and including the confirmation of sale, shall be deposited with the County Treasurer pending the result of such appeal, within ten days after the order of confirmation, and an undertaking signed by two sureties to be approved by the court, shall be given, running to the person securing the order of confirmation, conditioned upon the appeal being prosecuted without delay and that the appellant will pay to the adverse party the rental value of the property, in dispute, from and after the confirmation of sale and during the period covered by the appeal as well as all costs of appeal in case the decree of the District Court shall be affirmed. Such bond shall be filed with, and carefully preserved by, the Clerk of the District Court, and shall stay further proceedings until the appeal has been determined. The County Treasurer shall retain the amount paid by the party appealing, pending the decision of the Supreme Court. If upon appeal the confirmation shall be affirmed the amount deposited with the County Treasurer pending the appeal shall be returned to the party paying the same. If the confirmation shall be set aside the cause shall be remanded to the District Court and the fund in the hands of the Treasurer shall be applied as the court may direct.

**5237 SEC. 41. [Deed.]** Upon confirmation of sale it shall be the

duty of the County Treasurer to execute and deliver to the person or corporation in whose favor the order of confirmation was made, a deed of conveyance which shall be substantially in the following form:

State of Nebraska, ..... County, ss.

Whereas, at a public sale of real estate under a decree of the District Court, in the State tax suit for the year 19..., held in said county aforesaid, on the ..... day of ..... 19..., the following described real estate was sold, to-wit: (Description of real estate conveyed): and Whereas, said real estate has not been redeemed and the court has confirmed the sale and ordered the execution of a deed of conveyance of such real estate; Now, therefore, know ye, that I ..... County Treasurer of said county, in consideration of the premises and by virtue of the statutes of the state of Nebraska in such cases provided, do hereby grant and convey unto ....., his heirs and assigns forever, the said real estate hereinbefore described in fee simple, subject however, to all unpaid taxes and assessments thereon. Given under my hand this .... day of ....., 19...

..... Treasurer of ..... County.

Witness .....

Clerk of the District Court of ..... County.

(Seal)

Any number of tracts may be included in a single deed at the option of the grantee. Such deed when witnessed by the Clerk of the District Court or his deputy, with the seal of the court, shall be entitled to be recorded in the office of the register of deed without further authentication, and when so recorded shall be a conveyance and transfer to the grantee of the fee simple title to the real estate therein described and shall be wholly disconnected from any previous title or titles, and shall convey the entire estate sold by the treasurer, subject however, to all unpaid taxes and assessments, and shall be prima facie evidence of the regularity of all prior proceedings. [Id., § 41.]

**5238 SEC. 42. [Possession — Unconfirmed sale — Money refunded.]**

As soon as the sale shall have been confirmed by the court and deed issued and recorded, the party holding the deed shall be entitled to the immediate possession of the real estate therein described and the occupant shall be deemed a tenant holding over and may be proceeded against in any court of competent jurisdiction, or the holder of such deed may apply to the District Court for a writ of assistance to secure possession. Whenever a treasurer's sale shall not be confirmed (except for the failure of the purchaser to comply with the provisions of this act), the amount of the purchase price with seven per cent, interest thereon from the date of purchase, shall be refunded to the owner of such certificate under an order of the County Commissioners and by warrant drawn upon the general fund of said county. When money has been refunded to a purchaser as aforesaid, the County Treasurer shall charge the state, city, town, village or school district with its proportion of the amount so refunded, and the deductions so made shall be allowed on final settlements with the County Treasurer. [Id., § 42.]

**5239 SEC. 43. [Actions against persons in possession under tax deed.]** No action shall be maintained against a person in possession of

real estate under a recorded treasurer's deed until such person has been tendered the full amount paid at the tax sale with interest and costs and all subsequent taxes paid with interest to the date of the tender; and no action shall be maintained against a person in possession of real estate under such deed who has been in possession thereunder for a period of five years. [Id., § 43.]

**5240 SEC. 44. [Deed to state, county or city.]** Whenever lands or lots have been purchased by the state of Nebraska or by any county or municipal corporation, under the provisions of this act and the period of redemption has expired without an assignment of such sale, the state, county or municipal corporation may elect to take a deed to such property by serving final notice upon the owner and occupants, as provided in this act, at any time during the year following, during which time the real estate shall be subject to redemption as in other cases, or it may at any time after the period of redemption, surrender and cancel its certificate of tax sale, in which case all taxes and assessments included in the sale shall stand as though no decree had been entered, and such taxes and assessments shall be included in the petition of the State of Nebraska in the tax suit next following. When the State or any municipal subdivision, shall secure a deed under any tax sale, it shall pay to the county treasurer all taxes and assessments, other than its own, included in the decree. [Id., § 44.]

**5241 SEC. 45. [Irregularities.]** Throughout all of the proceedings it shall be the duty of the court to disregard all informalities or irregularities which may have occurred, from the inception of every state, county or city general tax up to final confirmation of sale. The performance of the various acts of officers herein enjoined shall be deemed sufficient if they shall substantially comply with the requirements of this act and no variation in the time or manner of performing such acts shall be deemed or held to be jurisdictional; and when any such acts cannot reasonably be performed within the times herein provided, additional time may be given, without notice, by a proper order of court. [Id., § 45.]

**5242 SEC. 46. [Evidence.]** All records and documents kept on file by any officer, or officers, under the provisions of this act, shall be prima facie evidence in all courts of this state of all the matters shown and stated therein in so far as the same are kept in substantial conformity to this act, and certified copies of such records and files shall be evidence of equal value with the originals. [Id., § 46.]

**5243 SEC. 47. [Official neglect.]** Any officer failing to perform his duty enjoined upon him by this act shall be liable to any party injured by such neglect of duty and the bondsmen of such officer shall likewise be liable for all damages arising out of such neglect of duty. [Id., § 47.]

**5244 SEC. 48. [Act cumulative.]** This act shall be deemed to be cumulative and to provide remedies in addition to those already provided by statute for the enforcement of taxes and assessments, and no sales for taxes heretofore made by any County Treasurer shall be affected by this act, but such sales shall be governed by the law in force at the date of such tax sales. All suits and actions now pending relating to any taxes or assessments shall not be governed or affected by the provisions of this act. The county commissioners or board of supervisors

of any county may by resolution adopted each year, elect to enforce the collection of delinquent taxes and assessments on real estate under the provisions of this act, but are not required to do so. Where such election has been made it shall not be necessary to offer the lands and lots for sale for delinquent taxes under the general revenue act of the state nor under any other act providing for the sale of real estate for delinquent taxes.

**5244a SEC. 49. [Cost of tax records, payment.]** It shall be lawful for the board of county commissioners, or board of supervisors, of any county in which the so-called scavenger law, being Article 9, of Chapter 77 of the compiled Statutes of Nebraska for the year 1905, has been heretofore or shall hereafter be adopted for the collection of taxes, to appropriate from the general fund of such county the amount necessary to cover the extra expense incurred by the county treasurer in making up and compiling the tax record. [1907, H. R. 374.]

"An Act to provide for the payment of piling such records by county treasurers." the cost of tax records required by Article Laws 1907, H. R. 374. In effect July 5, 9 of Chapter 77, compiled Statutes of Nebraska for 1905 and of preparing and com- 1907.



## ARTICLE X.—TERMINAL TAXATION.

**5245 SECTION 1. [Property, when listed.]** Every person, company or corporation owning, managing, or operating a railroad, union station or depot in this state, also every car company and freight line company operating cars or doing business in the State of Nebraska, shall cause all its taxable property to be listed for the purpose of local taxation by cities and villages, with reference to its amount, kind and value on the first day of March of the year in which it is listed.

ART. X. "An Act to provide for the taxation of railroad companies, union station and depot companies, car companies, and freight line companies by cities and vil-

lages, and for the collection of such taxes." Laws 1907, S. F. 261. In effect July 5, 1907.

**5245a SEC. 2. [Assessors—Annual assessment.]** The local assessor for each city and village as now provided by law, or as may hereafter be provided and the State Board of Equalization and Assessment shall be the assessing officers on behalf of such city or village and shall make an annual assessment of the property of all railroad companies, union station and depot companies, car companies, and freight line companies within their several jurisdictions for the purpose of levying city and village taxes thereon, as hereinafter provided.

**5245b SEC. 3. [Definitions.]** For the purposes of this act the following provisions and definitions are made:

(1) **[Railroad Company.]** Any person, association, company or corporation owning and operating a railroad, or operating a railroad in this state, or owning, or operating any station, depot, track, terminal, or bridge for railroad purposes as owner, lessee or otherwise, shall be deemed a "railroad company" within the meaning of this act.

(2) **[Union Station and Depot Company.]** The term, "union station and depot company", shall include every person, association, or corporation owning or operating any union station or depot for more than one railroad company or railroad system.

(3) **[Car Company.]** The term, "car company", shall include any person, association, or corporation owning or operating sleeping cars, refrigerator cars, stock cars, furniture cars, or cars of any other description, over any line or lines of railroad, or parts thereof, in this state.

(4) **[Freight Line Company.]** The term, "freight line company". shall include any person, association or corporation engaged in the business of operating cars, not included in the former definitions, for the transportation of freight, whether such freight be owned by such company or any other person or company, over any railway line or lines in whole or in part within this state, such line or lines not being leased, owned or operated by such company. Said term shall also include every person, association or corporation, wherever organized, engaged in the business of furnishing or leasing cars of whatever kind or description to be used in the operation of any railway line or lines wholly or partially within this state, such line or lines not being leased, owned or operated by such company.

(5) **[Property.]** The term, "property", as used in this act shall

be deemed to include all property, real and personal, belonging to the persons or corporations subject to taxation under this act, including the franchise, right of way, road-bed, bridges, superstructures, terminals, stations, cars, rolling stock, tracks, wagons, horses, office furniture, telegraph or telephone poles, wires, conduits, switch-boards, and all other property of every kind, including all title and interest in the same as owner, lessee, operator or otherwise, used in carrying on the business of such companies.

(6) [**Local Property.**] The term "local property" shall include all of the tangible property of a company in any city or village, except rolling stock. Local property shall not include any part of the franchise of any company.

(7) [**Company.**] The term, "Company", wherever used in this act without modifying words, shall apply to and be construed as referring respectively, to any railroad company, union station and depot company car company, or freight line company, and to any and all other persons and corporations subject to taxation under this act.

(8) [**Assessor.**] The term, "assessor as used in this act shall include within its meaning the county assessor of any county, precinct assessor of any precinct, tax commissioner of any city, as well as any officer authorized by law to assess for taxation, for city or village purposes, any property in this state.

(9) [**Board.**] The term "Board" in this act shall mean the State Board of Equalization and Assessment as by law now constituted, or any board hereafter created by law having similar powers and duties.

(10) [**Assess.**] The term "assess" as used in this act shall include within its meaning the valuation of property for the purpose of taxation.

(11) [**Title and Interest.**] The company operating a railroad, union depot or cars in this state shall be the representative of every title and interest in the property so operated or used, and shall include that of the owner, lessee or otherwise, and notice to the operating company shall be notice to all interests in such property for the purpose of taxation. The assessment and taxation of the property of any company in the name of the owner, or in the name of the operating company shall be deemed and held an assessment and taxation of all the title and interest in such property of every kind and nature.

(12) [**Street Railways.**] Street railways are excluded from the operation of this act.

5245c SEC. 4. [**Information — Witnesses — Fees, sheriff, witness.**] The board shall have access to all books, papers, documents, statements or accounts on file or of record in any of the departments of the state. It shall likewise have access to all books, papers, documents, statements and accounts on file or of record in counties, cities and villages, and the officers thereof shall furnish information of any and all matters on file in their respective offices as may be required by the board. The board shall have the power, by a summons signed by any member thereof, and served in like manner as a subpoena issued from courts of record, to compel witnesses to attend, give evidence and to produce books, and

papers. Any member of the board, or the secretary thereof, is authorized to administer the oath to witnesses. The attendance of any witness may be compelled by attachment issued by any district court upon a proper showing that such witness has been duly served with summons and has refused to appear before the officer or board issuing the summons. In case of the refusal of a witness to produce books, papers, documents or accounts, or to give evidence on matters material to the hearing, such refusal shall be reported to the prosecuting attorney of the county, or to the attorney general of the state, who shall thereupon institute proceedings in the proper district court to compel such witness to testify or produce books and papers and to punish him for the refusal. The person serving such summons shall receive the same compensation as now allowed to sheriffs or other officers for serving subpoenas. A person appearing before the Board in obedience to the summons shall, in the discretion of the Board, receive the same compensation as a witness in the district court to be audited by the city or village on behalf of which the subpoena was issued. The records, books, accounts and papers of any company owning, operating or controlling any of the property mentioned in this act shall be subject to the visitation, inspection and examination by any member of the board or by such person as it may designate.

**5245d SEC. 5. [Depositions.]** The Board may, in any matter material to the assessment or taxation of the property of the companies mentioned in this act, cause the deposition of witnesses residing without the state, or absent therefrom, to be taken, upon notice to the company interested, in like manner as depositions of witnesses are taken in civil actions pending in the district court.

**5245e SEC. 6. [Annual Reports to assessor.]** Each of the companies whose property is taxable in any city or village under the provisions of this act shall annually between the first day of February and the first day of March in each year, under the oath of the president or other chief officer and the secretary, treasurer, auditor or superintendent of such company, make and file with each assessor of each city and village in the state in which said company shall own, operate, use or control any property subject to taxation under the provisions of this act, also with the board, in such form as the board may prescribe, reports containing the following facts:

**5245f SEC. 6a. [Reports.] By Railroad Companies for each assessor.**

(1) The name and nature of the company, whether a person, association, or corporation. (2) The location of its principal office and the name and post office address of the chief officer or managing agent, and of all other general officers, residing in the state of Nebraska. (3) Description and total length of main line and all right of way in each city and village within the jurisdiction of the assessor, and the value thereof. (4) Detailed description of improvements thereon other than fuel and water stations, buildings and bridges, together with an itemized statement of their value. The itemized schedule shall show the number of ties in track per mile, the weight of iron or steel rails per yard, the length of time iron or steel has been used, the kind of ballasting,

length of time the road has been built, the number of switches, scales, length of side or second track, or turn-out, or spur, along such right of way, as well as all other appurtenances thereto not hereinafter enumerated, together with the itemized valuation thereof. (5) The accurate description of all land out side the above right of way, giving area in acres, or square feet, together with the value thereof. (6) An itemized schedule of all improvements thereon other than fuel and water stations and buildings. A detailed list of such improvements with separate values thereon shall be furnished in the same form and manner as prescribed in sub-division 4 of this section. (7) A description of each building with its appurtenances including platforms, showing the size of each building, and platform, cost of construction, age, and the present value of each. (8) A detailed description of each bridge or a part thereof, showing the length, width, height, material, cost of construction, age and value. (9) A detailed description of all fuel and water stations, together with the size and material of each, and of all machinery and appurtenances connected therewith, cost of construction, age and value. (10) Telegraph and telephone instruments, and all appliances belonging thereto, together with all wires and poles, showing length of time in use, and value. (11) A list of all other tangible property except rolling stock, together with an itemized statement of the value thereof. (12) The total value of the local property of such company in each city and village. (13) In addition, such other facts and information as the board may require in the form of returns prescribed by it.

[Reports.] **By Railroad Companies for the Board.** (1) The name of the company. (2) The nature of the company, whether a person, association, company or corporation, and under the laws of what state or country organized, the date of the original organization, date of reorganization, consolidation or merger, with specific reference to laws authorizing the same. (3) The location of its principal office. - (4) The name of the place where its books, papers and accounts are kept. (5) The name and post-office address of the president, secretary, treasurer, auditor, superintendent, general manager, counsel, directors, and all other general officers. (6) The name and post-office address of the chief officer or managing agent of the railroad company in Nebraska and of all other general officers residing in the state. (7) The total number of shares of capital stock. (8) The par value of the shares of the capital stock for the whole system showing separately: (I) Amount authorized. (II) Amount issued. (III) Amount outstanding. (IV) Also the dividends paid thereon. (9) The market value of the shares of capital stock for the whole system, on the dates and for the periods the board may request or specify. (10) If such capital stock has no market value, the actual value on the dates and for the periods designated by the board. (11) The funded debt of the railroad company for the whole system and a detailed statement of all series of bonds, debentures, or other securities, forming a part of the funded debt at par value, with date of issue, maturity, rate of interest and interest paid. (12) The market value of each series of funded debt for the whole

system of the dates and for the periods designated by the board, and if the whole or a part of such funded debt has no market value, then the actual value thereof for such dates and periods as the board may specify. (13) Such general description of the real estate of the railroad company owned or operated in Nebraska and in each city and village, separately, as would be sufficient in a conveyance thereof, under a judicial decree, directing a sale for taxes to vest in the grantees all title and interest in and to such property giving the value of each part and parcel located in each city and village, also, the value of the remainder thereof, such value to be based on the present cost of reproduction. (14) A like description of the personal property, including moneys and credits held by the company as a whole system and the part thereof apportioned to the line in Nebraska and separately to each city and village, together with the value thereof, together with an itemized valuation for each as in the preceding subdivisions. (15) A statement, in detail, of all capital stock, bonds or other securities of such railroad company owned by, or held in trust, for the company, and the capital stock, bonds or other securities of other persons, companies or corporations owned by, or held in trust for it, and the par value and the market or actual value of the same. (16) The whole length of the lines of the railroad system operated by the company and the length of the lines in Nebraska, and in each city and village, whether operated as owner, lessee, or otherwise. The length of the line owned and the length of the line operated for the whole system, and in Nebraska, shall be separately reported. (17) The entire gross earnings of the railroad company from operation, income from operation and the income from other sources for the whole system, and in Nebraska, and the disposition made of such income. (18) The entire gross earnings of such railroad company in Nebraska for each and every month for the last calendar year ending on the thirty-first day of December. (19) The annual reports of the board of directors, or other officers, to the stockholders of the company for the five years preceding; duplicates of the annual reports made to the Interstate Commerce Commission, to the Railroad Commissioners of this State, and to all other railroad commissioners or state officers, or boards, of the other states in, or through which, their lines are operated. (20) The gross income, or earnings received, in each city and village and out of each city and village, on business done therein, during the twelve months next before the first day of January of the year in which the report is required to be made. (21) In addition, all other information and facts relating to such company required by Section 87 of Chapter 77, Article I, Compiled Statutes of Nebraska for 1905, Entitled "Revenue" and such other facts and information as the board may require in the form of returns prescribed by it.

**5245g SEC. 6b. [Reports to assessor.] By Union Station and Depot Companies; for assessors and the Board.** (1) The name of the company. (2) The nature of the company, and under the laws of what state or country organized. (3) The location of its principal office. (4) The name and postoffice address of the president, secretary, auditor,

treasurer and superintendent or general manager. (5) The name and postoffice address of the chief officer or managing agent of the company in Nebraska. (6) The number of shares of capital stock. (7) The par value and market value, or if there be no market value, the actual value of the shares of stock on the first day of March of the year in which the report is made. (8) A detailed statement of the real estate owned by the company in Nebraska, and where situate, and the value thereof. (9) A detailed statement of the personal property, including moneys and credits owned by the company in Nebraska, on the first day in March in the year in which the report is made, where situate and the value thereof. (10) The total value of the real estate owned by the company situate outside of Nebraska. (11) The total value of the personal property of the company situate outside of Nebraska. (12) The whole length of their railway lines, if any, and the length of so much of their lines as is within or is without Nebraska, which lines shall include what such companies control and use as owners, lessees, or otherwise. (13) A statement of the entire gross receipts of the companies, from whatever source derived, for the year ending the first day of April [March] in the year for which the report is made. (14) Such other facts and information as the board may require, in the form of the returns prescribed by it.

**5245h SEC. 6c. [Reports.] By Car and Freight Line Companies: for the Board.** (1) The corporate name of the company. (2) The nature of the business of said company, and under the laws of what state or county [country] organized. (3) The location of its principal office. (4) The name and postoffice address of the president, secretary, auditor, treasurer and superintendent or general manager. (5) the location of its principal office in the state of Nebraska, together with the name and address of the chief officer or managing agent of the company in Nebraska. (6) The total number of cars operated by the company. (7) The total number of cars and rolling stock of any such company run over, or operated upon, each line of railroad within this state, each day, during the entire year preceding the date of making and filing such report. (8) The cost of construction of each of said cars. (9) The length of time same has been in service. (10) The cash value of each of the cars so operated and run in the state, at the time of making and filing such report. (11) The number of shares of capital stock. (12) The par value and market value, or if there be no market value, the actual value, of the shares of stock on the first day of March of the year in which the report is made. (13) Gross income from the entire business of the company. (14) Net income from the entire business of the company. (15) In addition, all other information and facts relating to such company required by Sections 97, 98 and 102, Chapter 77, Article I, Compiled Statutes of Nebraska, entitled "Revenue", and such other and additional information as may be required by the board, in the form of the return prescribed by it.

**[Blanks.]** Blanks for making the above reports shall be furnished to such companies by the board, except for the copies of reports required under the provisions of Subdivision 19 of section 6a in relation

to the report of railway companies, provided, the failure to furnish such blanks shall not excuse the failure of any company to make returns within the time and in the manner herein specified.

[Reports, neglect to make.] In case any company shall refuse or neglect to make the reports required by this act, or shall refuse or neglect to furnish any information requested, the assessor and board shall inform themselves the best they may on the matters necessary to be known in order to discharge their duties with respect to the assessment of the properties of such companies.

5245i SEC. 7. [Neglect by company—Perjury.] If any company whose property is required to be assessed under this act, or if any officer or agent of such company shall refuse, or neglect, to make any reports or returns required by this act, or by the board, or shall refuse or neglect to permit an inspection and examination of its records, books, accounts or papers when requested by said board, or shall refuse or neglect to appear before the board, in obedience to a summons, such company shall be estopped to question or impeach the action or determination of any assessor, or of the board upon any grounds not affecting the substantial justice of any tax which may be levied. Any officer, agent, or servant of any company, or any other person, who shall knowingly make any false answer to any question put to him, or who shall give or offer any evidence before the board, in relation to the matters which may be properly inquired into by such board, shall be guilty of perjury and it shall be the duty of any prosecuting attorney of any county to whom complaint shall have been made to prosecute every person so offending.

5245j SEC. 8. [Assessment rolls.] The several county and city clerks shall prepare separate assessment rolls for the assessment of the companies mentioned in this act and shall deliver the same, on or before the first day of March of each year, to the proper assessor for each city and village in his county. Upon such assessment roll, after the names of each of the companies to be assessed, shall be placed a description of the properties of such companies in general terms, which shall be deemed to include all of the local property of such companies liable to taxation for municipal purposes in each city and village under the provisions of this act. The assessment roll shall be so made as to provide for an itemized assessment of all of the local property of each company in each of the cities and villages in which such company shall own property or transact business.

5245k SEC. 9. [Assessments, local property.] It shall be the duty of the assessor, upon the receipt of such assessment roll, between the first day of March and the first day of May of each year, to value and assess all of the local property of each company in each city and village within his jurisdiction as of the first day of March of the current year. The valuation so placed upon the property of each company within each city and village shall be the true value, as near as may be, of that part of the company's local property in such city, or village, so that the same may be taxed on the same basis as other property is required to be taxed within such city or village. The returns of the companies re-

quired by this act shall not be held to be conclusive upon the Assessor or the Board, but each Assessor and the Board is authorized to make an assessment from all of the facts, circumstances and evidence which he, or it, may obtain in carrying out the provisions of this act. The assessment as made by the Assessor shall not be final until reviewed as herein-after provided.

5245<sup>l</sup> SEC. 10. [Assessment roll, entries—Certificate.] It shall be the duty of each assessor to enter in the assessment roll prepared for that purpose an itemized assessment of each of the companies to be assessed, showing the value separately of (1) The land constituting the right of way of each railroad company. (2) The improvements thereon, excluding fuel and water stations, buildings and bridges. (3) The land out side the right of way. (4) Improvements thereon other than fuel and water stations and buildings. (5) Each building with its appurtenances, including platforms. (6) Each Bridge. (7) Telegraph and telephone instruments, together with all the wires and poles connected therewith. (8) Fuel and water stations, together with their appurtenances. (9) All other tangible property except rolling stock. (10) The total value of the local property of each company in each city and village within his jurisdiction. Attached to such assessment roll shall be a certificate of the assessor substantially in the following form: State of Nebraska, County of ..... SS. I do hereby certify that I have set down in the above assessment roll all the local property of the railroad companies, union station and depot companies, car companies and freight line companies liable to be taxed in each city and village, in which I have jurisdiction to assess property in this state, to-wit: (Names of cities and villages), according to my best information and judgment, and that I have estimated the same at what I believe to be the true value thereof on a uniform basis with other property assessed for taxation in such cities and villages, respectively. .... (County Assessor) or (Tax Commissioner) ..... (County or City). The assessor making such assessment shall forward to the board at the capitol at Lincoln, on or before the first day of May of each year the assessment roll of all property assessed by him under the provisions of this act.

5245<sup>m</sup> SEC. 11. [Assessment by board—Equalization.] The Board on the first Monday in May of each year shall proceed to assess, for the purposes of city and village taxation, all of the property taxable under the provisions of this act, except local property. The assessment shall be made in the following manner: The Board shall first ascertain and find the total value of all the property of each company in the entire state of Nebraska. From the amount so ascertained shall be deducted the value of all the tangible property of said company except rolling stock, and the residue so ascertained shall be divided by the total number of miles of railroad main track in Nebraska owned by each railroad company, and by the total number of miles of railroad main track over which each car company and freight line company has run cars during the preceding year, and the quotient shall be the unit basis of city and village taxation of such property. The assessed valuation

of such intangible property and rolling stock in each city and village shall be computed by the Board by multiplying the unit of valuation so found for each company by the number of miles and fraction thereof of the main track of such company in such city and village respectively. It shall be the duty of the Board at its annual session as a board of equalization, which shall convene at the state capitol at Lincoln on the third Monday of July each year [to] review and equalize or change, as hereinafter provided, the several assessments made by the various assessors under the provisions of this act. The board shall be in session at least five days and may adjourn from day to day until its work is completed, provided, its findings and returns shall be made not later than its returns on the annual state and county assessments under the provisions of the general revenue law. Any company, shall have the right to appear and be heard as to the valuation of its property in any city or village, and to file objections to the assessed valuation of its property as returned by any assessor. Any city or village may also be represented and heard in relation to the raising or lowering of the assessments made on behalf of such city or village. The attorney general shall attend at such hearings and represent the board. The board shall have power, in reviewing the assessments made by the local assessors, to raise or lower any assessment in any city or village for the purpose of giving the property of each company a full and fair valuation in the several cities and villages. To the final assessment of the local property of each company shall be added the Board's assessment of all other property in each city and village, and the resulting amount shall stand as the final assessment of the property of such company taxable under the provisions of this act.

**5245<sub>n</sub> SEC. 12. [Same—Failure of Assessor — Record — Findings.]**

It shall be the duty of the board to equalize and so fix the values of the various properties returned, that the companies assessed shall stand, as near as may be upon a basis of equality with other taxpayers in the same cities and villages respectively. The assessed valuation of any company shall not be raised by the board to exceed the sum of all the local and Board assessments of such company without giving notice at least five days before final action. A registered letter containing such notice, addressed to such company at any place of business or office named in its report, shall be sufficient notice. In case any assessor shall fail to return to the board the assessment roll and an assessment in due form of all the local property of all the companies within his jurisdiction, the board shall make an assessment of all property which the assessor has failed to properly return. The assessment so made by the board shall be as binding as if made by the assessor. Notice of such original assessment by the board shall be given by letter addressed to the company affected thereby. The board shall keep a record of its acts and findings and when it has equalized and assessed all of the property herein provided for, agreeable to the provisions of this act, it shall make its findings and determinations, covering all of the assessment rolls before the board, showing that such board has duly met and held a session at the time and place provided by law and has heard

all complaints and objections to the assessment of the various properties as made by the assessors, and as made by the board, and has heard and considered all evidence with relation thereto; that such board has, to the best of its ability and according to the best information obtainable, equalized and assessed all of the property set forth in the assessment rolls so that the resulting taxation will be substantially uniform as to all persons and property within each city and village. The assessments by the board as finally made and equalized shall be final and conclusive.

5245<sub>o</sub> SEC. 13. [**Same—Transmission of rolls to clerks—Levy—Delinquent taxes.**] The Board shall transmit to the several county clerks, as soon as practicable after its final action as a board of equalization and assessment, the proper assessment rolls as corrected, and such valuations shall be the basis of the taxation of such companies and property by or on behalf of the several cities and villages. The levies of taxes provided for herein shall be extended upon the next tax lists of such cities and villages by the city and County Clerks, respectively, and shall be computed for each city and village, using the rate of the general levies for municipal purposes, applicable to all property in such city or village. From and after the date of levy such taxes shall be and remain, a first and paramount lien upon the property taxed until the same shall be paid. All taxes provided for by this act shall become delinquent at the same time, and draw interest from delinquency at the same rate as other general taxes in the same city or village.

5245<sub>p</sub> SEC. 14. [**Treasurer, notify company of levy.**] Each treasurer into whose hands the tax lists provided for in this act shall come, may notify, by mail, each company of the levy of such tax or taxes for city and village purposes, stating the amount thereof. In case such taxes shall not be paid prior to the date they become delinquent, they may be collected by distress and sale of property as other personal taxes, or an action may be maintained in the District Court of any county having jurisdiction, on behalf of any city or village entitled to such taxes, to collect the same.

5245<sub>q</sub> SEC. 15. [**Delinquency of assessor.**] Any assessor failing to perform the duties required of him by this act, or to make a true assessment and return according to his best information and judgment, after exercising due diligence with respect thereto, shall be fined in any sum not exceeding Five Hundred Dollars, or be punished by imprisonment not to exceed thirty days.

5245<sub>r</sub> SEC. 16. [**Regularity of proceedings presumed--Irregularities.**] The proceedings of the assessors and of the Board and the action of each of them in determining the assessable value of the property of the companies under the provisions of this act shall be presumed to be regular and valid, and the determination of such assessors and of the Board shall not be impaired, vitiated or set aside upon any grounds not affecting the substantial justice of the tax. The provisions of this act prescribing a date or period at, or within which any act shall be performed or determination shall be made by the Board, as well as all other acts looking to the orderly conduct of the business of any of

the officers herein provided for, shall be deemed directory only. No tax assessed or levied under the provisions of this act shall be held to be invalid in whole or in part, on account of being assessed in the wrong name, or on account of the manner of listing, assessing, apportioning, or valuing any property of any company, or on account of the method or manner of ascertaining and determining the assessable value of the property of any company by any Assessor or the Board, unless such company shall show that gross injustice has resulted therefrom.

5245s SEC. 17. [Injunction—Payment of taxes due.] In any action, suit, or proceeding brought by such company, or by any creditor, stockholder or bondholder thereof, to set aside, restrain or postpone the payment or collection of any tax levied upon the property of any company under the provisions of this act, no injunction, order or writ to enjoin or restrain the payment or collection of the tax shall issue or be continued in force, unless such company shall pay to the City or County Treasurer for the benefit of any city or village, whose taxes are affected thereby, the amount of taxes which the court shall determine primarily to be justly and equitably due from such company. Such primary determination shall be made by the court in which the action, suit or proceeding is pending, upon motion summarily and without delay. In case the amount of tax justly and equitably due from the company shall be finally determined to be less than the amount so paid, the excess shall be refunded to such company by direction of the court.

5245t SEC. 18. [Proceedings when tax adjudged illegal.] If any tax, or part thereof, levied under the provisions of this act shall be adjudged illegal and non-enforceable, or shall be set aside by any court of competent jurisdiction on any ground whatever, it shall be the duty of the Board, whether any part of the taxes assessed and levied have been paid or not, to forthwith re-ascertain and re-determine the value of the property of such company or companies, if the same shall be called for by such decision of the court, and when such re-assessment has been made, to make duplicates of the original assessment rolls with their valuations thereon and return the same to the respective officers of the cities and counties as provided in Section 13 of this act. Whereupon it shall be the duty of the city and county officers, respectively, to make a new computation and extend new levies of taxes against the company or companies affected by the order of the court, which taxes shall be of the same force and effect as an original assessment and levy made in accordance with law. The proceedings for such re-assessment and for the extension and collection of taxes upon such duplicate assessment rolls shall be conducted in the method originally provided as near as may be. The power is hereby given to re-assess the property of any company as often as may be necessary until the amount of taxes legally and justly due from any company for any year have been finally and definitely determined under the provisions of this act. In case re-levies shall be made credit may be given thereon of any amounts paid upon the prior levy.

5245u SEC. 19. [Extent of act.] This act shall not apply to, nor in any manner affect the assessment, equalization, levy or collection of any

state, county, township, school district or road district tax, nor shall it affect any assessments or levies heretofore made upon any property in the state of Nebraska. Nor shall this act be construed to affect any specific tax which may now, or which shall hereafter, be provided for by law, upon the property or business of any company or association within this state.

5245v SEC. 20. [Repeals.] All other acts, or parts of acts, whether contained in any acts for the incorporation of railroad companies, union station and depot companies, car companies, or freight line companies, or in any other law of this state, so far as such acts, or parts of acts, are inconsistent with this act, and no further, are hereby repealed, except as herein expressly stated.



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